2–6–98
Vol. 63 No. 25
Pages 6045–6468

federal register

Friday
February 6, 1998

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Contents

Federal Register

Vol. 63, No. 25

Friday, February 6, 1998

Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1948, 1951 and 4274

RIN 0570–AA15

Intermediary Relending Program

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is amending the regulations for the Intermediary Relending Program (IRP). This action is needed to clarify and revise procedures and requirements regarding a variety of issues. The amendments are expected to clarify the roles of the Government and intermediaries, make the program more responsive to the needs of intermediaries and ultimate recipients, and facilitate continuing expansion of the program.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 1521, 1400 Independence Ave, S.W., Washington, DC 20250. Telephone (202) 720–6819. The TTD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.767, Intermediary Relending Program.

Program Administration

Due to reorganization actions within the Department of Agriculture, the Intermediary Relending Program is currently administered by RBS. RBS is a successor to the Rural Development Administration, which was a successor to the Farmers Home Administration.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations. The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507)

Intergovernmental Review

As set forth in the final rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, Intermediary Relending Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. RBS has conducted intergovernmental consultation with such state and local officials in accordance with RD Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities.''

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings in accordance with the regulations of the Agency at 7 CFR 1900, subpart B, or those regulations published by the Department of Agriculture at 7 CFR part 11 to implement the statutory provisions relating to the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before filing suit to challenge action taken under this rule.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or

the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall comply with 5 U.S.C. 553 notwithstanding the exemption of that section with respect to such rules. Accordingly, this rule has previously been published as a proposed rule, on January 18, 1995 (60 FR 3566), for public comment. However, we are making this action effective upon publication of this final rule rather than 30 days after publication. The net impact of this rule is to interpret and clarify previous requirements, remove restrictions, streamline requirements, and make the program a more flexible and effective tool for rural economic development. Therefore the Agency has determined that further delay in implementation of this rule would not be in the public interest.

Background

This regulatory package is an initiative to enhance the program through revisions based on experience with operation of the program. The primary changes include the following:

1. The regulation is completely reorganized for improved clarity.

2. Definitions are provided for ''Agency IRP loan funds,'' ''IRP revolving fund,'' ''revolved funds,'' and ''technical assistance.'' Throughout the document, clarifications are provided as to which requirements apply only to Agency IRP loan funds, which apply to revolving funds, and which apply to all assets in the IRP revolving fund.

3. Agency State Offices are authorized to accept and process all applications except those from applicants located within Washington, D.C.. Those applications will be processed by the National Office.

4. Eligibility requirements for intermediaries are revised to clarify that a proposed intermediary that does not have lending experience may still qualify for a loan, if it will arrange for services of people with lending experience.

5. Eligibility requirements are revised to provide that proposed intermediaries with a delinquent outstanding Federal debt are not eligible for program assistance.

6. Eligibility requirements are provided for ultimate recipients.

7. Eligible purposes for loans to ultimate recipients are revised to authorize loans for refinancing, management consulting fees, educational institutions, commercial fishing, revolving lines of credit, and hotels, motels and other recreation and tourism facilities (except golf courses, gambling and race tracks).

8. Security requirements are revised.

9. General guidelines are provided for interest rates and terms of loans to ultimate recipients, along with clarification that such rates must be within limits established in the intermediary's work plan.

10. Loan ceilings are revised to provide that, subject to certain conditions, intermediaries may receive a series of subsequent loans of up to $1 million each to a combined total of up to $15 million. The ceiling on loans to an ultimate recipient is raised to $250,000.

11. The intermediary's responsibilities for maintaining and managing the intermediary revolving fund are clarified and a provision is added for establishment of a reserve for bad debts.

12. Loan disbursement procedures are revised to allow intermediaries to draw up to 25 percent of their loan at loan closing. The funds may be placed in an interest bearing account if they are not immediately needed for loans to ultimate recipients.

13. The requirement for intermediaries to operate in accordance with an approved work plan is clarified and guidelines are provided for RBS approval of work plan revisions.

14. The contents of a complete application and work plan are revised to eliminate some unnecessary items, provide more detail on what should be covered regarding relending plans, add certifications regarding debarment, Federal debt collection policies, and lobbying, and provide for streamlined applications for subsequent loans.

15. The priority point scoring system is revised.

16. The requirement for a certification by the intermediary regarding equity is removed.

17. Guidelines are provided for information to be submitted to RBS regarding proposed loans to ultimate recipients and for RBS review and response to the information.

Discussion of Comments

This rule was published in the **Federal Register** as a proposed rule on January 18, 1995 (60 FR 3566). The proposed rule was published as a revision to 7 CFR part 1948, subpart C. This final rule also renumbers and redesignates the regulation as 7 CFR part 4274, subpart D. In addition to publishing the proposed new regulation text for public comment, the Agency specifically invited comments on several alternatives. Eighty comments were received, most of which contained comments on several issues. In general, the letters were very supportive of the IRP and of the proposed rule. A summary of the comments follows.

Section 1948.101(b) of the proposed rule included a broad purpose statement in compliance with the authority contained in the authorizing legislation. In response to a question asked by the Agency, 20 writers said it would be helpful to have a more detailed and descriptive mission statement in the regulation to set out the Agency intent to emphasize alleviation of poverty, aid disadvantaged and remote communities, assist smaller and emerging businesses, improve the partnership with other public and private resources, and further develop State and regional strategy based on identified community needs. Nine writers thought the language in the proposed rule text was adequate and that it would be better to have less, rather than more, restrictive language in the purpose statement. The final rule contains a purpose statement that clarifies what the Agency wants to emphasize while maintaining sufficient flexibility to approve the loan purposes set out in the eligible purposes section.

The proposed rule text would prohibit intermediaries from loaning for revolving lines of credit. The Agency also asked for comments on whether this is a service intermediaries should be providing. Ten writers thought that loans for revolving lines of credit should not be eligible. Some thought there is not much need. Others said this type of credit entails too much risk and intermediaries would not have the special expertise needed.

Twenty-eight writers felt that there is a crucial need for revolving credit lines for small businesses and that intermediaries should have the option of offering this service if they do have expertise. The Agency is convinced that a significant need exists for this type of credit, so the final rule allows intermediaries to provide revolving lines of credit, if they meet guidelines that are included.

The proposed rule would allow intermediaries to make loans up to $250,000. The Agency asked, however, if it might be appropriate to retain the previous loan limit of $150,000. This

issue received more comments than any other single issue in the proposed rule. Eleven writers were in favor of a $150,000 limit, indicating that smaller loans are more difficult to obtain elsewhere and that the program should be targeted toward small loans and small businesses. However, 50 writers supported an increased loan limit of $250,000. Many said they would not need that authority often, but occasionally there is a very real need. Some thought the limit should be even higher or the proposed restriction on the portion of the portfolio that may be invested in loans of over $150,000 should be removed.

The strong support by the comments, for the proposed higher limit, reinforces the Agency belief that more flexibility is needed to allow intermediaries to decide what size projects are best in their areas. Therefore, the language of the proposed rule on this issue is retained in the final rule.

The Agency requested comments on appropriate outcome and performance measures and reporting requirements for the intermediary loan funds financed by the program, and for the funded activities of the ultimate recipients of the loans. Twenty-five writers commented on this issue, but there was little consensus. Most writers recognized the need for information for program evaluation, but most were also concerned about the amount of burden on intermediaries to provide information. Five writers thought the program should be evaluated on little more than the amount of funds loaned out and the repayment to the Agency. Six said reports should be made to the Agency on an annual or semi-annual basis rather than quarterly. Fourteen writers thought the number of jobs created or saved should be an evaluation criterion. Three considered leveraging of other funds an item that should be monitored. Three indicated that the fund balance, net profit, and solvency of the intermediary should be considered. Five writers suggested monitoring trends in the tax base of the service area as an indicator of the success of an intermediary's program. One writer suggested the Agency check on standard revolving loan fund reporting requirements developed by the Economic Development Administration. Other possible measures or report items suggested by 1 or more writers included sales volume, taxes paid and gross payroll of ultimate recipients, Standard Industrial Classification of ultimate recipients, summary of delinquent loans and actions taken, accomplishments regarding public policy, networking, outreach, and technical assistance, housing units and square feet of facilities constructed, and unemployment rate and per capita income trends in service area. Comments were requested on this issue as a tool to obtain ideas. There was no consensus among the writers, and the Agency believes more study is needed before making regulatory changes. No change from the proposed rule has been made in the final rule regarding this issue. The Agency will continue, however, to work on the development of an improved reporting form.

The proposed rule text would require intermediaries to have a successful lending record or to bring individuals with loan making and servicing experience and expertise into the operation. In the interest of enabling more socially oriented community-based organizations to use the program, the Agency asked for comments on allowing loans to intermediaries that have experience in assisting rural business or community development, but not lending experience.

Several writers expressed the desire to be sure of flexibility as to how such expertise may be achieved when the applicant intermediary does not have the experience in-house prior to filing the application. Hiring new staff with the needed experience, contracting for services, and creating a review or advisory board with experienced lenders as members are all options that one or more writers wanted to be sure were available. Only six writers advocated not requiring lending experience in some form for intermediary eligibility. Twenty six writers felt lending experience is important. Several writers were quite adamant that intermediaries cannot be expected to be successful and should not be approved unless they have lending experience or will acquire the services of someone with lending experience before receiving Federal funds.

It was the intent of the proposed rule language to require lending experience in some form, but to allow considerable flexibility as to how the experience is brought into the intermediaries' decision processes. A preponderance of the writers seemed to agree with that concept. Therefore, no change from the proposed rule language is made in the final rule on this issue.

The proposed rule text requires that at least 51 percent of the ownership interest or membership of both intermediaries and ultimate recipients be citizens of the United States or legally admitted to the United States for permanent residence. The Agency asked for comments on the concept of allowing loans to ultimate recipients owned by persons who are not United States citizens or admitted for permanent residence, provided the project funded creates or retains jobs for U.S. residents. Such loans would be restricted to fixed assets located in the U.S. and the business would have to have managers that are U.S. citizens or legally admitted to the U.S. for permanent residence. Seventeen writers expressed approval of the concept. They generally indicated that this provision would help to create jobs and that foreign investment may be particularly helpful to the U.S. economy. Three writers opposed this concept, generally on the grounds that profits from businesses with Federal assistance should not leave the country. Since the publication of the proposed rule, questions have been raised as to how this provision may relate to provisions of the Welfare Reform Act. Because of uncertainty regarding that issue, the change allowing the ultimate recipients to not be citizens or lawfully admitted residents has not been adopted in the final rule.

The Agency asked for comments on revising the eligible loan purposes for loans to ultimate recipients to include management consultant fees. Five writers were opposed to making management consultant fees an eligible loan purpose. They pointed out that if management is a problem it should be solved before a loan is approved and that Small Business Development Centers and the Service Core of Retired Executives can assist with management questions. They did not think the services the ultimate recipients would receive would be worth the cost or would improve repayment ability.

Nineteen writers thought intermediaries should be able to offer loans for management consultant fees. This group of writers tended to believe that management consultants would be likely to help some businesses enough for the business to become successful and to return additional profits sufficient to pay for the cost of the consultant fees. This group also tended to believe that intermediaries should be able to make the decision, without federal restriction. The Agency agrees that this use of funds could be effective in some cases and that intermediaries should be able to decide if this assistance should be an eligible loan purpose. The final rule includes management consultant fees as an eligible loan purpose for loans to ultimate recipients.

The Agency requested comments on a suggestion to revise the eligible loan

purposes to allow intermediaries to use IRP funds to provide direct technical assistance to ultimate recipients or prospective recipients. Ten of the respondents did not believe it is financially feasible to fund technical assistance from IRP loan funds. If the intermediary is allowed to use part of the funds loaned by the Agency to pay for the intermediary's costs for providing assistance to ultimate recipients, then that amount of funds is no longer available to be loaned to ultimate recipients. Therefore, that amount of funds is owed by the intermediary to the Agency, but is not producing revenue for the intermediary. This group of respondents indicated that all funds received by the intermediary from the agency should be reloaned by the intermediary to generate repayment ability.

Twenty respondents favored allowing IRP funds to be used by the intermediary to pay costs of providing technical assistance, primarily based on the grounds that such assistance is needed for many potential ultimate recipients to become successful. The Agency agrees that technical assistance is a valuable tool for assisting new or struggling businesses and the ability to provide more or better technical assistance would enable intermediaries to assist more businesses in communities where the assistance is most needed. However, the Agency agrees with the commenters questioning the financial feasibility of the concept. No one has solved the problem of how an intermediary would repay the funds it used to pay for technical assistance. No change from the proposed rule is made on this issue.

When the IRP was initiated in 1988, the security required for most loans to intermediaries was a blanket pledge of the IRP revolving fund. In 1991, the regulation was revised to require assignments on all promissory notes and security documents. The proposed rule attempted to clarify, but not change, the requirement that promissory notes be transferred to the Agency and assignment documents be provided but not recorded. Intermediaries have complained from time to time about being required to provide the assignments and the Agency asked for comments on whether the providing of assignments is an inordinate burden on the intermediary.

Forty-two respondents to the proposed rule said the assignments should not be required and seven said they did not object to continuing the assignments. The objectors generally cited such things as the legal costs for having assignments prepared, the administrative burden on both the intermediary and the Agency of transferring documents back and forth and monitoring them, and the additional complications of releasing paid-in-full loans, foreclosure, and other servicing actions. Those that did not object generally indicated that the burden of assignments is not great and the requirement is consistent with sound lending practice. In the interest of reducing administrative burden on both intermediaries and Agency staff and providing more flexibility for intermediaries to operate their programs, the requirement for assignments has been removed from the final rule.

Three writers objected to the requirement that intermediaries agree, in the loan agreement, to provide additional security as the Agency may require at any time during the life of the loan if an assessment indicates the need for such security to protect the Government's interest. When the original IRP regulation was published in 1988, four writers objected to this provision. It was retained then because the Agency believed that it was needed to protect the Government's interest. The basic concept is retained now for the same reason, although the language has been amended as part of the amended security requirements. The assets of a revolving fund, which make up the security for most IRP loans, continually change. The value can easily deteriorate, either because of economic conditions outside the control of the intermediary or because of poor decisions by the intermediary. In such cases, if the intermediary has other assets that could be used to repay the IRP loan, the Agency has a responsibility to the taxpayers to use whatever tools are available to ensure loan repayment.

Current regulations require intermediaries to obtain the Government's review and concurrence in the IRP loans the intermediaries propose to make to ultimate recipients. The proposed rule clarifies the limited scope of review required for concurrence and also clarifies that the requirement for review and concurrence applies only when Federal loan funds are involved. The requirement does not apply to loans made from the revolving fund from collections on previous loans. In addition, the Agency requested comments on a suggestion to exempt intermediaries that have demonstrated a successful track record of lending IRP funds and servicing loans from the requirement or to simply not require Government review and concurrence on loans to ultimate recipients made from subsequent loans to intermediaries.

Thirty-nine respondents to the proposed rule said that Agency review and concurrence should not be required for intermediaries that have established a successful record. Several of those respondents would like all prior Agency review eliminated, even on initial loans. One said Agency review and concurrence is not a burden and should be continued. One indicated Agency review and concurrence helps protect the intermediary against the possibility of future findings that a loan was not eligible and the process would not be a burden if it did not include an environmental impact assessment and intergovernmental consultation. The objectors generally seemed to feel that Agency review is an unnecessary additional step that slows service to the ultimate recipients. An intermediary is reviewed before its loan is approved for ability to carry out the program and then monitored through periodic visits, reports, and audits. The intermediaries would like the ability to make their day-to-day lending decisions independently.

The Agency has determined that loans to ultimate recipients made from Agency IRP loan funds, regardless of whether the funds are from an initial or subsequent loan to an intermediary, constitute Federal financial assistance. Therefore, the Agency has a responsibility to ensure that the funds are used for authorized purposes. More specifically, the National Environmental Policy Act imposes certain responsibilities on the Agency to consider environmental impacts and Executive Order 12372 imposes responsibilities on the Agency to provide opportunity for intergovernmental consultation and consider comments from designated representatives of State government before approving the financial assistance. These are specific requirements imposed on the Agency that the Agency does not have legal authority to delegate or to fail to perform. The Agency cannot meet these responsibilities unless it retains prior approval authority for all loans to ultimate recipients that are made from agency funds. No change from the proposed rule in made on this issue.

Intermediaries are required to establish separate bookkeeping accounts and bank accounts for the IRP revolving fund. Intermediaries that receive more than one IRP loan are required to establish a separate revolving fund with separate accounts for each loan. The proposed rule would allow the funds to be combined with Government consent and under certain conditions. The

Agency invited comments on the alternative of allowing the funds to be combined without Government consent unless the purposes of the loans were significantly different.

Thirty-eight writers commented on this issue and all of them were opposed to keeping separate accounts if it can be avoided. The Agency is generally in agreement, but there are situations where there is no logical alternative to separate funds. For example, there are several intermediaries now that have one loan made without a requirement for assignments of promissory notes and collateral documents to the Agency and another loan that does have that requirement. To know which ultimate recipient loans must have assignments, such an intermediary must either keep separate funds or provide assignments for all loans. The decision to remove the requirement for assignments will solve this issue, but there may be other similar issues in the future.

The real issue, therefore, appears to be whether the burden should be on the intermediary to request consent to combine funds when it may be appropriate or on the Agency to impose the requirement for separate funds when necessary. To accommodate the comments to the extent feasible, the final rule has been amended from the proposed rule to place the burden on the Agency to impose the requirement when necessary.

The Agency invited comments on the intergovernmental and environmental review requirements referenced in the proposed rule and how they could be further streamlined. Four respondents indicated that environmental assessments are important and not much can be done to make the process more streamlined than it already is. Twenty-six respondents thought the environmental review and the intergovernmental consultation process is excessive. Most of the comments were in reference to environmental concerns. Several comments appeared to indicate that the writers were considering environmental review in terms of protection against reduced collateral value due to site contamination with hazardous material. That is a credit quality issue and most of the Agency environmental review procedure does not address that issue. The Agency review is addressed toward assessing the possibility that financing the proposed project will result in some future environmental impact. Some of the suggestions were for procedures that are already authorized under Agency regulations and some were for items that would put the Agency in violation of its environmental responsibilities.

The National Environmental Policy Act (NEPA) and the regulations of the Council on Environmental Quality require environmental assessments of proposed Agency actions and sets out general procedures and requirements for meeting the requirements. Executive Order 12372 requires an opportunity for State comments on proposed Federal actions and sets out general procedures. The Agency is always looking for ways to meet these requirements more rapidly and in a manner more convenient for the people the Agency serves. The comments have not identified further changes that could be made at this time that would streamline the process and keep the Agency in compliance with NEPA and Executive Order 12372. Therefore, no changes from the proposed rule have been made regarding these issues.

In connection with implementation of the proposed rule the Agency plans to begin using a printed form as a loan agreement rather than preparing a loan agreement for each loan based on an exhibit to the regulation. Comments were invited on a possible additional step of having one loan agreement serve for multiple loans to the same intermediary by having a supplemental loan agreement extending the coverage of the original loan agreement to include the additional loan executed at loan closing for each subsequent loan.

One writer thought that it was a good idea to have a new loan agreement for each loan as new members of the board or management team would be more likely to read it if a new agreement must be signed. Twenty-eight writers were in favor of simply having an amendment or supplement to the original loan agreement for subsequent loans. Accordingly, the final rule provides for a supplemental loan agreement to be executed in connection with subsequent loans to make the original loan agreement applicable to the subsequent loan.

The Agency asked for comments on several alternative application requirements recommended by a task force but not incorporated into the proposed rule text. Nine writers were generally in favor of the suggested further revisions to the application. One of these writers said intermediaries would have the information and could share it. Another was willing to trade more due diligence at the application stage for more independence later. Eight writers were opposed to the additional application information. They generally seemed to feel that the language in the proposed rule text is adequate and the changes suggested would complicate the process, make it more time consuming, require more paperwork, and cause more inconsistencies.

The task force recommended application requirements be further revised, in section 1948.122(a)(2)(iii) of the proposed rule, to provide that the demonstration of need could be met through targeting criteria and supporting evidence that such prospective ultimate recipients exist in sufficient numbers to justify funding the intermediary's request. One of the writers was adamant that the show of need should not be based on targeting information, but rather, better documentation should be required to show that an adequate number of potential ultimate recipients exist. The Agency believes that it is important to realize that need for jobs does not necessarily equal demand for business loans. To create loan demand, there must also be existing or potential businesses willing and able to borrow and repay funds for startups or expansion. The Agency does, however, want to encourage the identification of areas of greatest need and target program assistance to those areas when feasible. Therefore, the final rule includes the option to include targeting information in the demonstration of need, provided it is accompanied by evidence that such prospective ultimate recipients exist in sufficient numbers to justify the loan.

The task force recommended further revising the application requirements by requiring the proposed intermediary to provide a set of goals, strategies, and anticipated outcomes for its program and a mechanism for evaluating the outcome of its IRP loan program. The Agency believes it is important for intermediaries to develop goals, strategies, and anticipated outcomes in order to obtain the maximum result from program funds. Therefore, the final rule includes a requirement for goals, strategies and anticipated outcomes for the intermediary's IRP loan program. To avoid further increasing the paperwork burden, there is no requirement included for a method of measuring outcome. The Agency will continue to study ways to measure outcomes in a consistent manner throughout the country.

The task force also recommended requiring each proposed intermediary to provide specific information on how it will ensure that technical assistance will be made available to ultimate recipients. The Agency believes that having technical assistance available to ultimate recipients may be an important factor in the success of many revolving loan funds. However, some intermediaries may not be able to

arrange for such services but can operate a successful relending program without it. Such intermediaries should not be denied assistance. Therefore, the final rule requires applicants to describe what technical assistance will be available to its ultimate recipients, without requiring that such assistance be universally available.

As proposed, priority points for community representation are limited to intermediaries with service areas not exceeding 10 counties. The Agency believes it should retain the category to encourage local participation in intermediary management, but remove some of the objections raised. The change to 14 counties is adopted in the final rule.

The Agency invited comments on further modifications to proposed scoring criteria to place greater emphasis on such factors as community and beneficiary targeting, conformance with regional or community development plans, and encouragement of smaller-size loans, with proportionately less emphasis on the intermediary's own resources and its ability to leverage funds.

Regarding the reduction of priority points for leveraging and intermediary contribution, six writers commented in favor and eleven commented in opposition, primarily based on differences of opinion on what is most important for the public good.

Regarding the creation of a new category of points for smaller loans, three writers were in favor and sixteen were opposed. The opposition seemed to be based on belief that the size of loans has little or no impact on the effectiveness of the program, intermediaries need flexibility to meet the needs in their particular areas, and intermediaries could too easily say they were going to make small loans, to get the points, and then not do it.

Regarding the awarding of points to intermediaries that propose to operate in accordance with a strategic plan, particularly one developed for an empowerment zone or enterprise community, writers were nearly equally divided, on philosophical grounds, with eight commenting in favor and nine commenting in opposition.

In the final rule, the reductions in points for leveraging are adopted, to shift more relative weight toward social factors. The previous points for intermediary contribution are maintained because that is a very important contributor to improved collectability of the Agency's loan. The suggested new points for small loans are not adopted because we believed that such a change would detract from program effectiveness. The suggested language regarding strategic plans and Empowerment Zones and Enterprise Communities is adopted as guidance for items that could justify Administrator points because the Agency generally wants to encourage strategic planning and assistance to Empowerment Zones and Enterprise Communities.

Also, an additional category of priority points has been added based on reduction in population of the service area. This was done because it came to the Agency's attention after the comment period was over that some areas have a low unemployment rate because of out migration. The percentage of the population seeking employment is low because many of the people needing employment have already left. Therefore, unemployment rate alone does not adequately reflect the need for economic development and jobs to enable the existing population to stay and former residents to return.

The proposed rule would require intermediaries to establish a bad debt reserve in the amount of 15 percent of the IRP portfolio unless a different amount is justified by the intermediary and approved by the Agency. The Agency asked for comments on whether 15 percent of the IRP portfolio is an appropriate amount of bad debt reserve for most intermediaries.

Most writers that commented on this issue agreed that a bad debt reserve is needed and sixteen writers thought 15 percent was an acceptable amount.

However, twenty-six writers disagreed with the 15 percent, with most of them saying it is too high. Many of the writers wanted the amount of the reserve required for each intermediary to be established based on that intermediary's history and situation. The Agency agrees that there should be flexibility, and the proposed rule language would allow for flexibility, but the Agency also wants to provide a general guideline from which adjustments can be made as appropriate. From the writers who mentioned any particular amount, most suggestions ranged between 3 and 10 percent of the portfolio. The final rule adopts a guideline amount of six percent because the program history seems to justify that amount as sufficient for the losses that have occurred.

The proposed rule would remove a general prohibition on loans for recreation and tourism facilities, but retain a prohibition on loans for hotels, motels, bed and breakfast establishments, and convention centers. Thirty-nine writers favored making hotels, motels, bed and breakfasts and convention centers eligible, compared to three who agreed with keeping them ineligible. It was pointed out that such facilities are very important to the potential economic development of many rural areas and that it is unfair to treat them as a group rather than consider each on its own merits.

The final rule adopts hotels, motels, bed and breakfasts, and convention centers as eligible. The Agency agrees that such facilities can be an important economic development tool in some areas and that each should be evaluated on its own merits.

One writer wanted virtually unrestricted use of IRP for financing agricultural production. The Agency believes that agricultural production is a specialized type of financing, the Department of Agriculture has special lending programs for agricultural production, and IRP should, for the most part, be restricted to other general business development. The recommendation is not adopted.

One writer wanted cranberry production to be made an eligible loan purpose, and pointed out that Senate Report 103–290, ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Bill, 1995,'' suggested the Department to make regulatory changes to allow Maine cranberry growers to qualify for IRP assistance. The Agency has determined that singling out one product, such as cranberry production, as an exception to the prohibition on loans for agriculture production is not justified. Therefore, the suggestion regarding cranberries is not adopted and other exceptions to the prohibition are also eliminated.

One writer said that commercial fishing should be an eligible loan purpose. Commercial fishing was inadvertently made ineligible through the definition of agriculture production. The recommendation is adopted by revising the definition.

Six writers were opposed to the provision that would limit subsequent loans to intermediaries to $1 million per year. These writers prefer that the loan amounts be limited only by factors such as the intermediary applicant's lending record or the demand for funds in the service area. The demand for funds is very difficult to determine accurately and may change drastically with little or no notice. Slow use by intermediaries of approved loan funds is still a major Agency concern in IRP in spite of Agency efforts to limit loan amounts according to demand. Limiting all subsequent loans to $1 million per year reduces the likelihood that intermediaries will borrow more than they can use in 1 year. The demand by

intermediaries for IRP funds from the Agency far exceeds the available funds. Limiting subsequent loans to $1 million per year will help to ensure distribution of each year's available funds to more applicants, while still allowing intermediaries with large needs to eventually obtain large amounts of funds. This provision of the proposed rule is unchanged.

Three writers requested that the term underrepresented be defined. The final rule includes a definition of underrepresented group as a group of U. S. citizens with identifiable common characteristics that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage the group represents of the general population.

Three writers wanted intermediaries to be allowed to use IRP funds to guarantee loans, as a alternative to making direct loans to ultimate recipients. They were apparently interested in the intermediaries having greater flexibility to determine how to best use the IRP funds to meet the needs of their service areas.

The Agency feels that an important benefit of the IRP is that, due to the low cost of money provided by the Agency and the nonprofit nature of most intermediaries, intermediaries can often offer below market interest rates to businesses that cannot afford market rates. By offering guarantees rather than direct loans, the interest rate would be established by commercial lenders, based on their cost of money and profit goals, and the interest rate advantage would be lost. Offering loan guarantees instead of direct loans also brings in a new set of management concerns and risks. Guaranteeing a loan does not require any cash, so the IRP loan funds would not be ''used'' to make the guarantee. Guaranteeing a loan creates a contingent liability, requiring the guarantor to pay an unknown amount at an unknown future date in the event a loss occurs. Presumably, IRP funds would be placed by the intermediary in secure investments and held to be available to pay losses if necessary. Some intermediaries might use this type of program as an excuse to place an excessive amount of funds in safe investments to accumulate interest earnings rather than help ultimate recipients. Other intermediaries might place too small an amount in safe investments and then be unable to meet their commitments in the event of losses that exceed expectations. This recommendation is not adopted.

Two writers wanted intermediaries to be allowed to purchase participation agreements in bank loans. Many intermediaries cooperate with banks, making referrals to each other and sharing risks through joint financing of ultimate recipient needs. The Agency strongly encourages this cooperation and joint financing. However, we have required that in a joint financing arrangement, the intermediary and bank each make a separate loan with separate debt instruments. When an organization buys a participation agreement it normally is not making a loan; it is purchasing an investment. The loan is made by the bank. The bank holds the promissory note and the collateral. The bank does the loan servicing, collects the payments, and forwards the appropriate portion of the payment to the holder of the participation agreement. The holder of the participation agreement has no responsibility for and no control over the servicing and no direct relationship with the borrower. It is an investor, not a lender. It would be too easy for the intermediary to use the purchase of participation agreements as a mechanism to simply invest in loans the bank would make anyway.

The Agency believes that, to properly carry out the intent of the program, intermediaries should have a direct lender-borrower relationship with the ultimate recipients. The intermediary should be in position to deal directly with the ultimate recipient to service the loan. If necessary, the Agency should be able to influence the servicing of the loan by the intermediary or to foreclose on a defaulted loan to an intermediary and take over the servicing and collection of the loan to the ultimate recipient.

The IRP regulation has always required intermediaries to make loans and the Agency has held that buying participations is not making loans. The word direct was inserted in the proposed rule to further clarify the intent. The language of the proposed rule is maintained in the final rule.

Three writers recommended elimination of the provision that ultimate recipients cannot obtain loans from more than one intermediary. This recommendation has been adopted. However, the language has been revised to clarify that the limits on loan amount to one ultimate recipient apply to the total dollar amount of IRP debt, regardless of whether it is one loan from one intermediary or several loans from several intermediaries.

Two writers also objected to the provision that IRP funds cannot finance more than 75 percent of total project costs. This provision helps to ensure wider distribution of limited program funds and reduced risk through ultimate beneficiary contribution or leveraging of other funding sources, and so the recommendation is not adopted.

Two writers requested a preferred lender status be established for experienced and successful intermediaries that target assistance to certain populations. Only one writer indicated what special benefits a preferred status should carry. Rather than create a special class of intermediaries, the agency is moving toward providing all the discretion and benefits it considers reasonable to all intermediaries. Therefore, the recommendation is not adopted.

The one writer who suggested specific benefits for preferred lenders proposed a moratorium on loan principal and interest payments to the Agency so long as the lender met certain performance standards. If the lender did not maintain the standards, it would lose its preferred lender status and be expected to resume normal loan repayment. Presumably, the interest that accrued and the principal that came due while the moratorium was in effect would be forgiven.

The Agency does not have the legal authority to forgive debt except in debt settlement situations when it is documented that the borrower does not have repayment ability. Also, as a matter of good credit program management, the Agency does not believe loan programs should be mixed with the characteristics of grant programs. If a grant is appropriate, the assistance should be authorized as a grant and recognized as a grant by all parties from the beginning. If a loan is made, it should be clearly set out in writing exactly what repayment is required. Then collection should be pursued in accordance with the lenders rights, so long as the borrower has repayment ability. To set up a loan with the understanding that a certain payment is required under normal circumstances but will be reduced under certain conditions would invite misunderstanding and dispute over the borrower's liability, create servicing problems, and foster law suits to enforce or prevent collection. The recommendation is not adopted.

One writer requested that intermediaries be able to provide equity investment for ultimate recipients. Another requested the conflict of interest paragraph from the existing regulation be kept in place so that it applies to all loans from the IRP revolving fund. In the proposed rule the requirement was moved and would only apply to loans from Agency IRP loan funds. The conflict of interest paragraph provides that an intermediary and its principal officers (including immediate

family) must hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) must hold no legal or financial interest or influence in the intermediary. This not only prevents an intermediary from using Agency IRP loan funds for equity investment, it prevents the intermediary from making a loan from Agency IRP loan funds to an ultimate recipient to which it has provided equity investment from another source of funding.

The Agency recognizes that there is a need for equity investment or venture capital for new businesses in rural areas. However, providing equity investment means purchasing an ownership interest in the business. The Agency is concerned that if an intermediary is considering a loan to a business in which it owns an interest, the intermediary's credit quality analysis and loan approval decision may be influenced by its desire to assist or protect the value of its ownership interest. The final rule does not authorize the use of IRP loan funds for equity investment and the conflict of interest restriction has been rewritten so that it applies to all loans made from the IRP revolving loan fund.

One writer wanted the definition of rural to be amended so that loans could be made to ultimate recipients in cities of up to 50,000 people. The Agency believes that retaining the 25,000 population limit will help direct the limited funding to the areas of greatest need. The recommendation is not adopted.

One writer indicated that the definitions of Agency IRP loan funds, IRP revolving fund, and revolved funds are not sufficiently clear. The writer wanted a statement included, consistent with an existing Administrative Notice, to provide that revolved funds are not subject to the requirements of Agency regulations. The writer also wanted a paragraph to set out what regulatory procedures are required of intermediaries administering non-Federal funds. The Agency believes that the definitions of Agency IRP loan funds, IRP revolving funds, and revolved funds are as clear as can be achieved. The Agency believes that the broad statement in the previous regulation regarding non-federal funds not being subject to the regulations has been the cause of past confusion about what requirements apply in different situations. The Agency has intentionally avoided such broad statements in the new regulation. Also, the Agency intentionally wrote the proposed rule to apply the requirements differently than under the Administrative Notice that provided interpretation of the previous regulation. The Agency has attempted to end the confusion over these issues by clearly stating in each section of the regulation whether that section applies to Agency IRP loan funds only or to the IRP revolving fund. Section 4274.332(a) explains that if the reference is to the IRP revolving fund, the requirement applies to both revolved (or non-Federal) funds and Agency IRP loan funds. If the reference is to Agency IRP loan funds, without reference to the IRP revolving fund, then the requirement applies only to Agency IRP loan funds. The language of the proposed rule on this issue is not changed.

One writer recommended the restrictive language regarding interest rates to ultimate recipients be removed to allow intermediaries flexibility. The proposed rule only provides a general guideline regarding how interest rates should be established and requires that limits be established in the work plan. There is also a provision for amending the work plan that could be used should the limits established at the application stage become a problem in the future.

Some guidelines and limits are needed to deal with two extremes that continue to occur from time to time. Some intermediaries propose to charge interest rates so low that sufficient revenues would not be produced to maintain the revolving fund and meet the repayment schedule to the Agency. These intermediaries must be counseled and encouraged to plan for higher rates in order for the loan from the Agency to be feasible. There are other intermediaries that propose interest rates so high that it raises questions as to whether the intermediary is trying to help ultimate recipients and the community or just trying to bring in revenues.

The Agency believes that the language in the proposed rule gives the intermediary considerable flexibility while also providing sufficient guidelines to allow the Agency to prevent unreasonable extremes. The recommendation is not adopted.

One writer requested that the ban on loans to charitable and educational institutions be removed because they can be valid businesses. Another writer wanted certain organizations that the writer considered charitable to be eligible. The prohibition of loans to educational institutions has been removed in the interest of allowing more flexibility and the reference to charitable has been clarified. The Agency's concern is that loans not be made if the recipient will depend on donations, rather than sales or fees, to repay the loan or administer the revolving loan fund.

One writer objected to the requirement that the intermediary's interest in insurance required of the ultimate recipient be assigned to the Agency. The Agency agrees that valid assignment of all such insurance is an unnecessary administrative burden. The final rule has been modified to require assignments of insurance only if the intermediary is in default.

In addition to responding to the public comments, the final rule differs from the proposed rule by providing that any applicant that is delinquent on any Federal debt is not eligible to receive assistance from Agency IRP funds. This provision was added to comply with Public Law 104–132 dated April 26, 1996 (31 U.S.C. 3720B).

Lists of Subjects

7 CFR Part 1948

Business and industry, Credit, Economic development, Rural areas.

7 CFR Part 1951

Loan programs—Agriculture, Rural areas.

7 CFR Part 4274

Community development, Economic development, Loan programs—Business, Rural areas.

Accordingly, Title 7, Chapters XVIII and XLII, of the Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1948—RURAL DEVELOPMENT

1. The authority citation for part 1948 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932 note.

Subpart C—[Removed and Reserved]

2. Subpart C, part 1948 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 has been revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932 Note, 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart R—Rural Development Loan Servicing

4. Section 1951.852(b)is amended by removing the numeric paragraph designations and by removing the

abbreviation for ''FmHA or its successor agency under Pub. L. 103–354''.

5. Section 1951.853 is amended by revising in paragraph (a) the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the Agency'' and by revising paragraph (b)(2)(ix) to read as follows:

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

* * * * *

(b) * * *

(2) * * *

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

* * * * *

6. Section 1951.883 is amended by revising paragraph (a)(2) to read as follows:

§ 1951.883 Reporting requirements.

(a) * * *

(2) Quarterly or semiannual reports (due 30 days after the end of the period).

(i) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(ii) These reports shall contain only information on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(iii) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

* * * * *

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

7. Chapter XLII, title 7, Code of Federal Regulations is amended by adding a new part 4274 to to read as follows:

PART 4274—DIRECT AND INSURED LOANMAKING

Subparts A–C—[Reserved]

Subpart D—Intermediary Relending Program (IRP)

Sec.

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program (IRP)

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with part 1951, subpart R, of this title.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted primarily towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area.

(c) Proposed intermediaries are required to identify any known relationship or association with a USDA Rural Development employee. Any processing or servicing Agency activity conducted pursuant to this subpart involving authorized assistance to United States Department of Agriculture (USDA) Rural Development employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter.

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available in the National Office or any Rural Development State Office.

§ 4274.302 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart:

Agency. The Federal agency within the USDA with responsibility assigned by the Secretary of Agriculture to administer IRP. At the time of publication of this rule, that Agency was the Rural Business-Cooperative Service (RBS).

Agency IRP loan funds. Cash proceeds of a loan obtained from the Agency through IRP, including the portion of an IRP revolving fund directly provided by the Agency IRP loan. Agency IRP loan funds are Federal funds.

Agricultural production or agriculture production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed.

Initial Agency IRP loan. The first IRP loan made by the Agency to an intermediary.

Intermediary. The entity requesting or receiving Agency IRP loan funds for establishing a revolving fund and relending to ultimate recipients.

IRP revolving fund. A group of assets, obtained through or related to an Agency IRP loan and recorded by the intermediary in a bookkeeping account or set of accounts and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management (including setting policy) of an intermediary.

Processing office or officer. The processing office for an IRP application is the office within the Agency administrative organization with assigned authority and responsibility to process the application. The processing office is the primary contact for the proposed intermediary and maintains the official application case file. The processing officer for an application is the person in charge of the processing office. The processing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to applications under the office's jurisdiction.

Revolved funds. The cash portion of an IRP revolving fund that is not composed of Agency loan funds, including funds that are repayments of Agency IRP loans and including fees and interest collected on such loans. Revolved funds shall not be considered Federal funds.

Rural area. All territory of a State that is not within the outer boundary of any city having a population of 25,000 or more, according to the latest decennial census.

Servicing office or officer. The servicing office for an IRP loan is the office within the Agency administrative organization with assigned authority and responsibility to service the loan. The servicing office is the primary contact for the borrower and maintains the official case file after the loan is closed. The servicing officer for a loan is the person in charge of the servicing office. The servicing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to loans under the office's jurisdiction.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subsequent IRP loan. An IRP loan from the Agency to an intermediary that has received one or more IRP loans previously.

Technical assistance. A function performed for the benefit of an ultimate recipient or proposed ultimate recipient, which is a problem solving activity. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary's IRP revolving fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

(b) *Abbreviations.* The following are applicable to this subpart:

B&I—Business and Industry
IRP—Intermediary Relending Program
OGC—Office of the General Counsel
OIG—Office of Inspector General
OMB—Office of Management and Budget
RBS—Rural Business-Cooperative Service, or any successor agency
RDLF—Rural Development Loan Fund
USDA—United States Department of Agriculture

§§ 4274.303–4274.306 [Reserved]

§ 4274.307 Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are:

(1) Private nonprofit corporations.

(2) Public agencies—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) Indian groups—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) Cooperatives—Incorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(2) Have a proven record of successfully assisting rural business and industry, or, for intermediaries that propose to finance community development, a proven record of successfully assisting rural community development projects of the type planned.

(i) Except as provided in paragraph (b)(2)(ii) of this section, such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the IRP and a delinquency and loss rate acceptable to the Agency.

(ii) The Agency may approve an exception to the requirement for loan making and servicing experience provided:

(A) The proposed intermediary has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects of the type planned; and

(B) The proposed intermediary will, before the loan is closed, bring individuals with loan making and servicing experience and expertise into the operation of the IRP revolving fund.

(3) Have the services of a staff with loan making and servicing expertise acceptable to the Agency.

(4) Have capitalization acceptable to the Agency.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.

(2) The loan is not otherwise available on reasonable (*i.e.*, usual and customary) rates and terms from private sources or other Federal, State, or local programs.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United

States or individuals who reside in the United States after being legally admitted for permanent residence.

(e) Any delinquent debt to the Federal Government by the intermediary or any principal of the intermediary shall cause the intermediary to be ineligible to receive any IRP loan. Agency loan funds may not be used to satisfy the debt.

§ 4274.308 Eligibility requirements—Ultimate recipients.

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund, ultimate recipients;

(1) Must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. In the case of an organization, at least 51 percent of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area of a State.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(4) Must, along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient. However, this paragraph shall not prevent an intermediary that is organized as a cooperative from making a loan to one of its members.

(c) Any delinquent debt to the Federal Government by the ultimate recipient or any of its principals shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds. Agency IRP loan funds may not be used to satisfy the delinquency.

§§ 4274.309–4274.313 [Reserved]

§ 4274.314 Loan purposes.

(a) *Intermediaries.* Agency IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipients.* Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, or saving existing jobs. Such loans may include, but are not limited to:

(1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(2) Business construction, conversion, enlargement, repair, modernization, or development.

(3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(4) Purchase of equipment, leasehold improvements, machinery, or supplies.

(5) Pollution control and abatement.

(6) Transportation services.

(7) Start-up operating costs and working capital.

(8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(9) Feasibility studies.

(10) Debt refinancing.

(i) A complete review will be made by the intermediary to determine whether the loan will restructure debts on a schedule that will allow the ultimate recipient to operate successfully and pay off the loan rather than merely take over an unsound loan. The intermediary will obtain the proposed ultimate recipient's complete debt schedule which should agree with the proposed ultimate recipient's latest balance sheet; and

(ii) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(iii) On any request for refinancing of existing secured loans, the intermediary is required, at a minimum, to obtain the previously held collateral as security for the loans and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

(11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, management consultant fees, and other fees for services rendered by professionals. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The maximum amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(12) Hotels, motels, tourist homes, bed and breakfast establishments, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.319.

(13) Educational institutions.

(14) Revolving lines of credit: *Provided,*

(i) The portion of the intermediary's total IRP revolving fund that is committed to or in use for revolving lines of credit will not exceed 25 percent at any time;

(ii) All ultimate recipients receiving revolving lines of credit will be required to reduce the outstanding balance of the revolving line of credit to zero at least one time each year;

(iii) All revolving lines of credit will be approved by the intermediary for a specific maximum amount and for a specific maximum time period, not to exceed two years;

(iv) The intermediary will provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description will include evidence that the intermediary has an adequate system for:

(A) Interest calculations on varying balances, and

(B) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable; and

(v) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the Agency may terminate the intermediary's authority to use the IRP revolving fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

§§ 4274.315–4274.318 [Reserved]

§ 4274.319 Ineligible loan purposes.

Agency IRP loan funds may not be used for payment of the intermediary's administrative costs or expenses. The IRP revolving fund may not be used for:

(a) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project .

(b) Distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(c) Charitable institutions that would not have revenue from sales or fees to support the operation and repay the loan, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(d) Assistance to government employees, military personnel, or principals or employees of the intermediary or organizations for which such persons are directors or officers or in which they have ownership of 20 percent or more.

(e) A loan to an ultimate recipient which has an application pending with or a loan outstanding from another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in § 4274.331(b).

(f) Agricultural production.

(g) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(h) Community antenna television services or facilities.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.

(k) Lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

§ 4274.320 Loan terms.

(a) No loan to an intermediary shall be extended for a period exceeding 30 years. Interest and principal payments will be scheduled at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by the Agency, but not more than 3 years.

(b) Loans made by an intermediary to an ultimate recipient from the IRP revolving fund will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient. The term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary's work plan.

§§ 4274.321–4274.324 [Reserved]

§ 4274.325 Interest rates.

(a) Loans made by the Agency pursuant to this subpart shall bear interest at a fixed rate of 1 percent per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients on loans from the IRP revolving fund shall be negotiated by the intermediary and ultimate recipient. The rate must be within limits established by the intermediary's work plan approved by the Agency. The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving fund's debt service costs, reserve for bad debts, and administrative costs.

§ 4274.326 Security.

(a) *Intermediaries.* Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, the Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Agency's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients must be assignable.

(b) *Ultimate recipients.* Security for a loan from an intermediary's IRP revolving fund to an ultimate recipient will be negotiated between the intermediary and ultimate recipient, within the general security policies established by the intermediary and approved by the Agency.

§§ 4274.327–4274.330 [Reserved]

§ 4274.331 Loan limits.

(a) Intermediary.

(1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within 1 year after loan closing.

(2) The initial Agency IRP loan as defined in § 4274.302(a) will not exceed $2 million.

(3) Intermediaries that have received one or more IRP loans may apply for and be considered for subsequent IRP loans provided:

(i) At least 80 percent of the Agency IRP loan funds approved for the intermediary have been disbursed to eligible ultimate recipients;

(ii) The intermediary is promptly relending all collections from loans made from its IRP revolving fund in excess of what is needed for required debt service, reasonable administrative costs approved by the Agency, and a reasonable reserve for debt service and uncollectable accounts;

(iii) The outstanding loans of the intermediary's IRP revolving fund are generally sound; and

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with the Agency.

(4) Subsequent loans will not exceed $1 million each and not more than one loan will be approved for an intermediary in any one fiscal year.

(5) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed $15 million at any time.

(b) *Ultimate recipients.* Loans from intermediaries to ultimate recipients using the IRP revolving fund must not exceed the lesser of:

(1) $250,000; or

(2) Seventy five percent of the total cost of the ultimate recipient's project for which the loan is being made.

(c) *Portfolio.* No more than 25 percent of an IRP loan approved may be used for

loans to ultimate recipients that exceed $150,000. This limit does not apply to revolved funds.

§ 4274.332 Post award requirements.

(a) *Applicability.* Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the ''IRP revolving fund,'' such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. Whenever this subpart imposes a requirement on loans made by intermediaries from ''Agency IRP loan funds,'' without specific reference to the IRP revolving fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds, and will not apply to loans made from revolved funds.

(b) *Maintenance of IRP revolving fund.* For as long as any part of an IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving fund. All Agency IRP loan funds received by an intermediary must be deposited into an IRP revolving fund. The intermediary may transfer additional assets into the IRP revolving fund. All cash of the IRP revolving fund shall be deposited in a separate bank account or accounts. No other funds of the intermediary will be commingled with such money. All moneys deposited in such bank account or accounts shall be money of the IRP revolving fund. Loans to ultimate recipients are advanced from the IRP revolving fund. The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving fund are a part of the IRP revolving fund.

(1) The portion of the IRP revolving fund that consists of Agency IRP loan funds, on a last-in-first-out basis, may only be used for making loans in accordance with § 4274.314 of this subpart. The portion of the IRP revolving fund which consists of revolved funds may be used for debt service, reasonable administrative costs, or reserves in accordance with this section, or for making additional loans.

(2) The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The amount removed from the IRP revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget.

(3) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves must be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary's portfolio of loans. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 3 years and then maintained.

(4) Any cash in the IRP revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients.

(5) All reserves and other cash in the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses will be deposited in accounts in banks or other financial institutions. Such accounts will be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

(6) If an intermediary receives more than one IRP loan, it need not establish and maintain a separate IRP revolving loan fund for each loan; it may combine them and maintain only one IRP revolving fund, unless the Agency requires separate IRP revolving funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements as required by the Agency.

§§ 4274.333—4274.336 [Reserved]

§ 4274.337 Other regulatory requirements.

(a) *Intergovernmental consultation.* The IRP is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan from Agency IRP loan funds and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Single Point of Contact must be notified. Notification, in the form of a project description, must be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the Agency loan funds for the ultimate recipient. Prior to the Agency's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. (See RD Instruction 1940-J (available in any Rural Development State Office)).

(b) *Environmental requirements.*

(1) Unless specifically modified by this section, the requirements of part 1940, subpart G, of this title apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) For each application for a loan to an intermediary, the Agency will review the application, supporting materials, and any environmental information required from the intermediary and complete a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time. Neither the completion of the environmental assessment nor the approval of the application is an Agency commitment to the use of loan funds for a specific project; therefore, no public notification requirements for a Class II assessment will apply to the application.

(3) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, the Agency will complete the environmental review required by part 1940, subpart G, of this title including public notification requirements. The results of this review will be used by the Agency in making its decision on

concurrence in the proposed loan. The Agency will prepare an Environmental Impact Statement for any application for a loan from Agency IRP loan funds determined to have a significant effect on the quality of the human environment.

(c) *Equal opportunity and nondiscrimination requirements.*

(1) In accordance with title V of Pub. L. 93–495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, intermediary, or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The regulations contained in subpart E of part 1901 of this title apply to this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, title VI of the Civil Rights Act of 1964, ''Nondiscrimination in Federally Assisted Programs,'' 42 U.S.C. 2000d–4, Section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans With Disabilities Act.

(d) *Seismic safety of new building construction.*

(1) The Intermediary Relending Program is subject to the provisions of Executive Order 12699 that requires each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(2) All new buildings financed with Agency IRP loan funds shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(i) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(ii) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(iii) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(3) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications shall be evidence of compliance with the seismic requirements of the appropriate code.

§ 4274.338 Loan agreements between the Agency and the intermediary.

A loan agreement or a supplement to a previous loan agreement must be executed by the intermediary and the Agency at loan closing for each loan. The loan agreement will be prepared by the Agency and reviewed by the intermediary prior to loan closing.

(a) The loan agreement will, as a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

(3) The term and repayment schedule;

(4) *The provisions for late charges.* The intermediary shall pay a late charge of 4 percent of the payment due if payment is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default;

(5) *The disbursement procedure.* Disbursement of loan funds by the Agency to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. For purposes of computing interest, the date of each draw down shall constitute the date the funds are advanced under the loan agreement;

(i) The intermediary may initially draw up to 25 percent of the loan funds. If the intermediary does not have loans to ultimate recipients ready to close sufficient to use the initial draw, the funds must be deposited in an interest bearing account in accordance with § 4274.332(b)(5) until needed for such loans. The initial draw must be used for loans to ultimate recipients before any additional Agency IRP loan funds may be drawn by the intermediary. Any funds from the initial draw that have not been used for loans to ultimate recipients within 1 year from the date of the draw must be returned to the Agency as an extra payment on the loan. Agency IRP loan funds must not be used for administrative expenses;

(ii) After the initial draw of funds, an intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances must be requested by the intermediary in writing;

(6) *The provisions regarding default.* On the occurrence of any event of default, the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an ''event of default'' in the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may become applicable;

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency;

(iii) The occurrence of;

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors, or;

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it;

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of the

Agency's award of assistance hereunder, which condition was an inducement to Agency's original award.

(7) *The insurance requirements.* (i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient funded from the IRP revolving fund and will be assigned or pledged to the intermediary and subsequently, in the event of request by the Agency following default by the intermediary, to the Agency. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with the State law.

(iv) *Flood Insurance.* The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with subpart B of part 1806 of this chapter.

(v) Intermediaries will provide fidelity bond coverage for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees and officials. The Agency may also require the intermediary to carry other appropriate insurance, such as public liability, workers compensation, and property damage.

(A) The amount of fidelity bond coverage required by the Agency will normally approximate the total annual debt service requirements for the Agency loans;

(B) Other types of coverage may be considered acceptable if it is determined by the Agency that they fulfill essentially the same purpose as a fidelity bond;

(C) Intermediaries must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the intermediary to assure and provide evidence that adequate coverage is maintained. This may consist of a listing of policies and coverage amounts in reports required by paragraph (b)(4) of this section or other documentation.

(b) The intermediary will agree in the loan agreement:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of the Agency;

(2) Not to make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) To maintain a separate ledger and segregated account for the IRP revolving fund;

(4) To Agency reporting requirements by providing:

(i) An annual audit;

(A) Dates of audit report period need not necessarily coincide with other reports on the IRP. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. The Agency does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement;

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by OMB Circular A–128 or A–133 should submit audits made in accordance with those circulars;

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(C) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time.

(5) Before the first relending of Agency funds to an ultimate recipient, to obtain written Agency approval of;

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments;

(ii) Intermediary's policy with regard to the amount and form of security to be required;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding;

(7) To secure the indebtedness by pledging the IRP revolving fund, including its portfolio of investments derived from the proceeds of the loan

award, and pledging its real and personal property and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) That if any part of the loan has not been used in accordance with the intermediary's work plan by a date three years from the date of the loan agreement, the Agency may cancel the approval of any funds not yet delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds delivered to the intermediary that have not been used by the intermediary in accordance with the work plan. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than 3 additional years. If any loan funds have not been used by 6 years from the date of the loan agreement, the approval will be canceled of any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Intermediary Relending Program promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

§§ 424.339—4274.342 [Reserved]

§ 4274.343 Application.

(a) The application will consist of:

(1) An application form provided by the Agency.

(2) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(i) Document the intermediary's ability to administer IRP in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(ii) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of IRP. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(iii) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(v) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(vi) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to IRP;

(vii) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan;

(viii) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as jobs created for low income area residents or self empowerment opportunities funded, and should relate to the purpose of IRP (see § 4274.301(b)); and

(ix) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(3) Environmental information on a form provided by the Agency for all projects positively identified as proposed ultimate recipient loans that are Class I or Class II actions under subpart G of part 1940 of this title;

(4) Comments from the State Single Point of Contact, if the State has elected to review the program under Executive Order 12372;

(5) A *pro forma* balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving fund only and a separate set of projections that shows the proposed intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first 3 years, the projections for the IRP revolving fund must extend to include a year with a full annual installment on the IRP loan;

(6) A written agreement of the intermediary to the Agency audit requirements;

(7) An agreement on a form provided by the Agency assuring compliance with Title VI of the Civil Rights Act of 1964;

(8) Complete organizational documents, including evidence of authority to conduct the proposed activities;

(9) Evidence that the loan is not available at reasonable rates and terms

from private sources or other Federal, State, or local programs;

(10) Latest audit report, if available;

(11) A form provided by the Agency in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts;

(12) A Department of Agriculture form containing a certification regarding debarment, suspension, and other responsibility matters for primary covered transactions; and

(13) A statement on a form provided by the Agency regarding lobbying, as required by 7 CFR part 3018.

(b) Applications from intermediaries that already have an active IRP loan may be streamlined as follows:

(1) The requirements of paragraphs (a)(6), (a)(8), and (a)(10) of this section may be omitted;

(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous loan may be submitted in lieu of a new work plan; and

(3) The financial information required by paragraph (a)(5) of this section may be limited to projections for the proposed new IRP revolving loan fund.

§ 4274.344 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring assistance under this subpart may file applications with the state office for the state in which the intermediary's headquarters is located. Intermediaries headquartered in the District of Columbia may file the application with the National Office, Rural Business-Cooperative Service, USDA, Specialty Lenders Division, STOP 1521, 1400 Independence Avenue SW, Washington, DC 20250–1521.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by the Agency will be reviewed and ranked quarterly and funded in the order of priority ranking. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

(c) *Loan priorities.* Priority consideration will be given to proposed intermediaries. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (c)(1) through (c)(6) of this section. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) *Other funds.* Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—5 points;

(B) At least 25% but less than 50% of the total project cost—10 points; or

(C) 50% or more of the total project cost—15 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-Agency derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project costs—5 points;

(B) At least 25% but less than 50% of total project costs—10 points; or

(C) 50% or more of total project costs—15 points.

(2) *Employment.* For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in the consumer price index. The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Unemployment data used will be that published by the Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of four:

(A) At least 150% but not more than 175%—5 points;

(B) At least 125% but less than 150%—10 points; or

(C) Below 125%—15 points.

(ii) The following percentage of the loans the intermediary makes from Agency IRP loan funds will be in counties with median household income below 80 percent of the statewide non-metropolitan median household income. (To receive priority points under this category, the intermediary must provide a list of counties in the service area that have qualifying income):

(A) At least 50% but less than 75%—5 points;

(B) At least 75% but less than 100%—10 points; or

(C) 100%—15 points.

(iii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points;

(B) At least 125% but less 150%—10 points; or

(C) 150% or more—15 points.

(iv) The intermediary will require, as a condition of eligibility for a loan to an ultimate recipient from Agency IRP loan funds, that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

(A) At least 10% but less than 20% of the workforce—5 points;

(B) At least 20% but less than 30% of the workforce—10 points; or

(C) 30% of the workforce or more—15 points.

(v) The intermediary has a demonstrated record of providing assistance to members of underrepresented groups, has a realistic plan for targeting loans to members of underrepresented groups, and, based on the intermediary's record and plans, it is expected that the following percentages of its loans made from Agency IRP loan funds will be made to entities owned by members of underrepresented groups:

(A) At least 10% but less than 20%—5 points;

(B) At least 20% but less than 30%—10 points; or

(C) 30% or more—15 points.

(vi) The population of the service area according to the most recent decenial census was lower than that recorded by the previous decenial census by the following percentage:

(A) At least 10 percent but less than 20 percent—5 points;

(B) At least 20 percent but less than 30 percent—10 points; or

(C) 30 percent or more—15 points.

(3) *Intermediary contribution.* All assets of the IRP revolving fund will serve as security for the IRP loan, and the intermediary will contribute funds not derived from the Agency into the IRP revolving fund along with the proceeds of the IRP loan. The amount of non-Agency derived funds contributed to the IRP revolving fund will equal the following percentage of the Agency IRP loan:

(i) At least 5% but less than 15%—15 points;

(ii) At least 15% but less than 25%—30 points; or

(iii) 25% or more—50 points.

(4) *Experience.* The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points;

(ii) At least 3 but less than 5 years—10 points;

(iii) At least 5 but less than 10 years—20 points; or

(iv) 10 or more years—30 points.

(5) *Community representation.* The service area is not more than 14 counties and the intermediary utilizes local opinions and experience by including community representatives on its board of directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives, or bankers, who reside in the service area and are not employees of the intermediary. Points will be assigned as follows:

(i) At least 10% but less than 40% of the board members are community representatives—5 points;

(ii) At least 40% but less than 75% of the board members are community representatives—10 points; or

(iii) At least 75% of the board members are community representatives—15 points.

(6) *Administrative.* The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that may be considered are the amount of funds requested in relation to the amount of need; a particularly successful business development record; a service area with no other IRP coverage; a service area with severe economic problems, such as communities that have remained persistently poor over the last 60 years or have experienced long-term population decline or job deterioration; a service area with emergency conditions caused by a natural disaster or loss of a major industry; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of a previous IRP loan.

§§ 4274.345—4274.349 [Reserved]

§ 4274.350 Letter of conditions.

If the Agency is able to make the loan, it will provide the intermediary a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the form provided by the Agency indicating the intermediary's intent to meet the conditions. If certain conditions cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance.

§§ 4274.351—4274.354 [Reserved]

§ 4274.355 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of the obligation of funds document is mailed to the intermediary. The approving official may request an obligation of funds when available and according to the following:

(a) The obligation of funds document may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan and to enter into required agreements, and has signed the obligation of funds document.

(b) An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

§ 4274.356 Loan closing.

(a) At loan closing, the intermediary must certify to the following:

(1) No major changes have been made in the work plan except those approved in the interim by the Agency.

(2) All requirements of the letter of conditions have been met.

(3) There has been no material change in the intermediary nor its financial condition since the issuance of the letter of conditions. If there have been changes, they must be explained. The changes may be waived, at the sole discretion of the Agency.

(4) That no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(b) The processing officer will approve only minor changes which do not materially affect the project, its capacity, employment, original projections, or credit factors. Changes in legal entities or where tax consideration are the reason for change will not be approved.

§§ 4274.357—4274.360 [Reserved]

§ 4274.361 Requests to make loans to ultimate recipients.

(a) An intermediary may use revolved funds to make loans to ultimate recipients without obtaining prior Agency concurrence. When an intermediary proposes to use Agency IRP loan funds to make a loan to an ultimate recipient, and prior to final approval of such loan, Agency concurrence is required.

(b) A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(1) Certification by the intermediary that;

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations;

(iv) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(v) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary except the interest and influence of a cooperative member when the intermediary is a cooperative;

(2) For projects that meet the criteria for a Class I or Class II environmental assessment or environmental impact statement as provided in subpart G of part 1940 of this title, a completed and executed request for environmental information on a form provided by the Agency;

(3) All comments obtained in accordance with § 4274.337(a), regarding intergovernmental consultation;

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

(i) Name and address of the ultimate recipient;

(ii) Loan purposes;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Other funding included in the project; and

(vi) Nature and lien priority of the collateral.

(5) Such other information as the Agency may request on specific cases.

§§ 4274.362—4274.372 [Reserved]

§ 4274.373 Appeals.

Any appealable adverse decision made by the Agency which affects the intermediary may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

§§ 4274.374—4274.380 [Reserved]

§ 4274.381 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 4274.382—4274.399 [Reserved]

§ 4274.400 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Dated: January 9, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–3044 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97–104–1]

Specifically Approved States Authorized to Receive Mares and Stallions Imported from Regions Where CEM Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Oklahoma to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis (CEM). We are taking this action because Oklahoma has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves unnecessary restrictions on the importation of mares and stallions from regions where CEM exists.

DATES: This rule will be effective on April 7, 1998 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 9, 1998.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 97–104–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 97–104–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8423; or e-mail: dvogt@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 93 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases. Section 93.301(c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Section 93.301(c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported from regions where CEM exists for permanent entry must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. These States have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to receive stallions or mares over 731 days of age from a region where CEM exists because the States have entered into a written agreement with the Administrator, APHIS, to enforce State laws and regulations to control CEM, and the States have agreed to quarantine, test, and treat mares and stallions over 731 days of age from a region where CEM exists in accordance with § 93.301(e) of the regulations.

Oklahoma has entered into a written agreement with the Administrator of APHIS and has agreed to comply with all the requirements in § 93.301(e) for importing mares and stallions over 731 days old from regions where CEM exists. This direct final rule will, therefore, add Oklahoma to the list of States in §§ 93.301(h)(6) and (h)(7) approved to receive certain stallions and mares imported into the United States from regions where CEM exists.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We anticipate that fewer than 20 mares and stallions over 731 days old will be imported into the State of Oklahoma annually from regions where CEM exists. Approximately 200–300 mares and stallions over 731 days old from regions where CEM exists were imported into approved States in fiscal year 1996. During this same period, approximately 3,243 horses of all classes were imported into the United States from countries other than Canada and Mexico through air and ocean ports; approximately 18,223 horses were imported from Canada; and, approximately 10,079 horses were imported from Mexico.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.301 [Amended]

2. Section 93.301 is amended as follows:

a. In paragraph (h)(6), by adding, in alphabetical order, ''The State of Oklahoma''.

b. In paragraph (h)(7), by adding, in alphabetical order, ''The State of Oklahoma''.

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3045 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–219–AD; Amendment 39–10309; AD 98–03–17]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model HS 748 series airplanes. This action requires repetitive inspections to detect discrepancies of the gust locks of the flight control system, re-rigging of the gust lock system; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct failure of the flight control gust lock system, which could result in reduced controllability of the airplane.

DATES: Effective February 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model HS 748 series airplanes. The CAA advises that investigation of an incident revealed deficiencies in the rigging of the flight control gust lock system. These deficiencies, if not corrected, could result in failure of the gust lock system, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996, which describes procedures for two types of repetitive inspections to detect discrepancies of the gust locks of the flight control system; re-rigging of the gust locks is included as part of the second inspection. The alert service bulletin also describes procedures for corrective actions, if necessary. The CAA classified this alert service bulletin as mandatory and issued British airworthiness directive 008–12–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

None of the Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 32 work hours to accomplish the initial inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $1,920 per airplane, per inspection cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–219–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–17 British Aerospace Regional Aircraft (Formerly British Aerospace, Aircraft Group): Amendment 39–10309. Docket 97–NM–219–AD.

Applicability: All Model HS 748 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the gust locks of the flight control system, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection to detect discrepancies (improper gaps or failure of the 'pull down' check) of the aileron, rudder, and elevator gust locks, in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996.

(1) If no discrepancy is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 750 flight hours.

(2) If any discrepancy is detected, prior to further flight, accomplish the actions required by paragraph (b) of this AD. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 750 flight hours.

(b) Except as provided by paragraph (a)(2) of this AD, prior to the accumulation of 750 flight hours after the accomplishment of the actions required by paragraph (a) of this AD: Perform an inspection to detect discrepancies (excessive wear or play, improper alignment or adjustment, or improper clearances) of the aileron, rudder, and elevator gust locks; and re-rig the gust lock system; in accordance with Part 2 of the Accomplishment Instructions of Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996.

(1) If no discrepancy is detected, repeat the inspection and re-rigging required by paragraph (b) of this AD thereafter at intervals not to exceed 1,500 flight hours.

(2) If any discrepancy is detected, prior to further flight, repair in accordance with the alert service bulletin. Thereafter, repeat the inspection and re-rigging required by paragraph (b) of this AD at intervals not to exceed 1,500 flight hours.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 008–12–96.

(f) This amendment becomes effective on February 23, 1998.

Issued in Renton, Washington, on January 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2822 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–269–AD; Amendment 39–10310; AD 98–03–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. This amendment requires a new terminating modification for the existing AFM revisions. This amendment also requires a new AFM revision to inform the flightcrew that, under certain conditions, an ''EMER DC BUS'' warning on the multi-function display unit (MFDU) will occur, and to take appropriate corrective actions. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failures of the emergency DC/AC bus power supply, which could reduce the ability of the flightcrew to control the airplane.

DATES: Effective March 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–21–10, amendment 39–9396 (60 FR 53110, October 12, 1995), which is applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes, was published in the **Federal Register** on January 16, 1997 (62 FR 2324). The action proposed to supersede AD 95–21–10 to continue to require revising the Abnormal and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. The action also proposed to require a modification of the DC bus transfer system, which would terminate the existing requirements for the AFM revisions. In addition, the action proposed to require revising the Abnormal Procedures Section of the AFM to inform the flightcrew that an ''EMER DC BUS'' warning on the multi-function display unit (MFDC) will occur when the emergency DC bus is transferred to battery power, and to take appropriate corrective actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Revise Cost Impact Information

One commenter supports the proposed rule, but estimates that the modification required by this AD will cost $4,250 per airplane, which is more than the $3,380 per airplane estimate in the proposed rule.

The FAA infers that the commenter requests that the cost impact information for this AD be revised. The FAA agrees that cost impact of the required modification is more than the estimated $3,380 per airplane contained in the proposed rule. Since issuance of the Notice of Proposed Rulemaking (NPRM), Fokker has issued Service Bulletin SBF100–24–032, Revision 1, dated April 25, 1997, and Revision 2, dated July 28, 1997, to correct minor errors, and to revise the work hour estimates and part cost estimates for accomplishment of the modification. The estimate for accomplishment of Part 1 of the Accomplishment Instructions of the service bulletin has been changed

from 17 work hours to 22 work hours, and the estimate for accomplishment of Part 2 of the Accomplishment Instructions of the service bulletin has been changed from 5 work hours to 13 work hours. In addition, the estimate for parts costs has been changed from a range of $160 to $2,360, to a range of $160 to $2,580. The FAA has revised the cost impact information, below, accordingly.

The FAA has determined that accomplishment of the modification in accordance with the original issue, Revision 1, or Revision 2 of Fokker Service Bulletin SBF100–24–032 adequately addresses the identified unsafe condition. Therefore, this AD has been revised to include Fokker Service Bulletin SBF100–24–032, Revision 1, dated April 25, 1997, and Revision 2, dated July 28, 1997, as additional sources of service information.

Request To Extend Compliance Time for Modification

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the compliance time for accomplishing the modification be extended from the proposed 12 months to 18 months. The commenter states that if it is forced to meet the proposed 12-month compliance schedule, approximately 20 of the 40 affected airplanes in its fleet would require modification in a line environment or during unscheduled heavy maintenance visits. The commenter noted that this would result in significant additional costs. In addition, the commenter states that the modification would be difficult to accomplish during routine overnight line station maintenance due to the complexity of the task and accessibility. The commenter also noted that the elapsed time to accomplish the modification will be twice the service bulletin estimate of 8 hours, since only one person at a time could work on this modification. The commenter further noted that only three diode failures have been experienced on its affected fleet of airplanes since operation commenced in 1989. The commenter considers that this relatively low failure rate also supports its request for an extension of the compliance time.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's and foreign airworthiness authority's recommendations as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required modification without compromising safety. The commenter has not provided data to substantiate why an extension of the compliance time would not compromise safety. The failure rate data of a single operator does not substantiate why an extension of the compliance time would not compromise safety.

In consideration of all of these factors, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA has determined that further delay of this modification is not appropriate. However, under the provisions of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 132 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 95–21–10 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $7,920, or $60 per airplane.

The modification of the DC bus transfer system that is required by this new AD will take approximately 22 (Part 1 of the Accomplishment Instructions of the service bulletin) or 13 (Part 2 of the Accomplishment Instructions of the service bulletin) work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will range from $160 to as much as $2,580 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be between $940 and $3,900 per airplane.

The AFM revision that is required by this new AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision required by this AD on U.S. operators is estimated to be $7,920, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9396 (60 FR 53110, October 12, 1995), and by adding a new airworthiness directive (AD), amendment 39–10310, to read as follows:

98–03–18 Fokker: Docket 96–NM–269–AD. Supersedes AD 95–21–10, Amendment 39–9396.

Applicability: All Model F28 Mark 0100 and 0070 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failures of the emergency direct current (DC)/alternating current (AC) bus power supply, which could reduce the ability of the flightcrew to control the airplane, accomplish the following:

Restatement of Actions Required by AD 95–21–10, Amendment 39–9396

Note 2: For Model F28 Mark 0070 series airplanes, on which the procedures specified in Fokker Service Bulletins SBF100–24–033 and SBF100–24–034 have been accomplished, the AFM revisions required by paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

Note 3: For Model F28 Mark 0100 series airplanes, on which the procedures specified in Fokker Service Bulletin SBF100–24–030 have not been accomplished, or on which the procedures specified in Fokker Service Bulletin SBF100–24–033 have been accomplished; the AFM revisions required by paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

(a) For all airplanes: Within 7 days after October 27, 1995 (the effective date of AD 95–21–10, amendment 39–9396), revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

STANDBY ANNUNCIATOR PANEL RED AC SUPPLY LIGHT "ON"

On overhead electrical panel:

GEN LOAD.....CHECK

• If all generator loads are approximately zero:

LOSS OF AC SUPPLY PROCEDURE.....APPLY

• If not all generator loads are approximately zero:

DC EMER BUS SUPPLY TRU3 CIRCUIT BREAKER.....CHECK

• If circuit breaker has tripped:

DC EMER BUS SUPPLY TRU3 CIRCUIT BREAKER.....RESET

—If reset is unsuccessful:

L and R AUDIO.....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure.

• If circuit breaker has not tripped:

L and R AUDIO.....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure."

(b) For all airplanes: Within 7 days after October 27, 1995, revise the Normal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 5—Normal Procedures

Insert in front of Sub-section 5.01.01—Take-off

• After engine start, select the Standby Annunciator Panel (SAP) backup mode ON via the BACKUP p/b at the SAP.

• Keep the SAP in the backup mode for the whole duration of flight until engine shutdown.

• Monitor the SAP.

Note: Failure conditions as presented on the SAP bypass the Flight Warning Computer (FWC) are not subject to alert inhibition. Be aware that the red LG light on the SAP will illuminate in case one or both thrustlever(s) are below the minimum take-off position and the landing gear is not down."

(c) For all Model F28 Mark 0070 series airplanes; and Model F28 Mark 0100 series airplanes, in pre-SBF100–24–009 configuration or in post SBF100–24–030 configuration: Within 7 days after October 27, 1995, revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

ERRATIC ELECTRICAL SYSTEM BEHAVIOR

In case of continuous rattling sound, caused by the fast switching of relays and accompanied by blanking or erratic behavior of the three displays on the electric panel:

BATTERIES...SELECT MOMENTARILY OFF, THEN ON

AFFECTED SYSTEMS.....RESTORE IF REQD

If the red AC SUPPLY light on the SAP comes ON:

SAP RED AC SUPPLY LIGHT 'ON' PROCEDURE.....APPLY"

New Actions Required by This AD

(d) For Model F28 Mark 0070 and 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–24–032, dated September 12, 1996, or Revision 1, dated April 25, 1997, or Revision 2, dated July 28, 1997: Within 12 months after the effective date of this AD, modify the DC bus transfer system in accordance with Fokker Service Bulletin SBF100–24–032, dated September 12, 1996; or Revision 1, dated April 25, 1997; or Revision 2, dated July 28, 1997. Prior to further flight following accomplishment of this modification, accomplish paragraph (e) of this AD.

Note 4: For Fokker Model F28 Mark 0070 series airplanes, Fokker Service Bulletin SBF100–24–032 recommends prior or concurrent accomplishment of the procedures specified in Fokker Service Bulletin SBF100–24–034, dated October 17, 1995, or Revision 1, dated September 12, 1996 (which is currently required by AD 96–26–03, amendment 39–9866).

(e) Revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Sub-section 4.04.05—Electrical Power—Bus Equipment List

Insert a marker ☐ in each Bus Equipment List table, at the top of the column marked: EMERGENCY—DC.

Add the following note at the beginning of the affected sub-section:

Note: ☐ When an "EMER DC BUS" fault is presented on the multi-function display unit (MFDU), check whether the electric panel digital readouts are operative.

• If operative, the EMER DC bus is supplied from the battery chargers via the batteries for 90 minutes and all services connected to this bus will remain available. After this time period, batteries will start to discharge and the effects of an EMER DC BUS fault should then be expected.

• If inoperative, continue with the EMER DC BUS FAULT procedure.

At the bottom of each succeeding page (Bus Equipment List table) of sub-section 4.04.05, make a clear reference to the note marked ☐ located at the beginning of sub-section 4.04.05."

(f) Accomplishment of the modification in accordance with paragraph (d) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), and (c) of this AD. After the modification has been accomplished, the previously required AFM revision may be removed from the AFM.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA,

Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with the following Fokker service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
SBF100–24–032, September 12, 1996	1–46	Original	September 12, 1996.
SBF100–24–032, Revision 1, April 25, 1997	1–4, 7–62	1	April 25, 1997.
	5–6	Original	September 12, 1996.
SBF100–24–032, Revision 2, July 28, 1997	1–2, 13, 15, 29–30	2	July 28, 1997.
	3–4, 7–12, 14, 16–28, 31–62	1	April 25, 1997.
	5–6	Original	September 12, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in Dutch airworthiness directive BLA 1995–089/4, dated September 30, 1996.

(j) This amendment becomes effective on March 23, 1998.

Issued in Renton, Washington, on January 30, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2825 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–23–AD; Amendment 39–10313; AD 97–15–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–15–15, which was sent previously to all known U.S. owners and operators of Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters by individual letters. This AD requires an inspection of the main gearbox magnetic plug (magnetic plug) and the main gearbox oil filter (oil filter) for ferrous chips; vibration measurements, if necessary; and replacement of the main gearbox if a specified quantity of ferrous chips are discovered, or if abnormal vibrations are identified at a certain frequency. This amendment is prompted by two recent reports of cracks found in planetary gear shafts (gear shafts) in main gearboxes that have not been modified in accordance with MOD 077244. The actions specified by this AD are intended to detect cracks in the gear shaft which could lead to failure of the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter.

DATES: Effective February 23, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–15–15, issued on July 18, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On July 18, 1997, the FAA issued priority letter AD 97–15–15, applicable to Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters, which requires an inspection of the magnetic plug and the oil filter for ferrous chips; vibration measurements, if necessary; and replacement of the main gearbox if a specified quantity of ferrous chips are discovered, or if abnormal vibrations are identified at a certain frequency.

That action was prompted by two recent reports of cracks found in gear shafts in main gearboxes, part number (P/N) 365A32–6000–00, 365A32–6000–02, 365A32–6001–00, or 366A32–0001–00, that have not been modified in accordance with MOD 077244. Upon inspection, the manufacturer discovered that 13 main gearbox epicyclic modules were assembled at the factory with mismatched planetary gear tooth to ring gear radii. This produces higher than normal gear tooth loading stresses which substantially reduce the fatigue life of the gear shaft. This condition, if not corrected, could result in cracks in the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter.

Eurocopter France has issued Telex Service No. 0035/00188/97, dated July 7, 1997, and Telex Service No. 00037/00190/97, dated July 9, 1997, which specify checks of the oil filter after the last flight of each day for cracks; and also specify performing vibration measurements if metal chips are found on the magnetic plug or in the oil filter, or if abnormal vibrations are reported by the crew. The DGAC classified these service telexes as mandatory, and issued AD 97–145–042(AB), dated July 10, 1997, and AD 97–164–020(AB), dated July 16, 1997.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction

Generale de L'Aviation Civile (DGAC) has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters of the same type design, the FAA issued priority letter AD 97–15–15 to detect cracks in the gear shaft which could lead to failure of the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter. The AD requires an inspection of the magnetic plug for ferrous chips after each flight when the main rotor is stopped, and an inspection of the oil filter for ferrous chips after the last flight of each day or at intervals not to exceed 12 hours time-in-service, whichever occurs first. If ferrous chips are discovered as a result of either inspection, or if abnormal vibrations are reported by the flight crew, then vibration measurements must be performed on the ground. If vibration levels above the helicopter's basic data are identified at a frequency of 26.07 HZ, or if an accumulation of ferrous chips found on the magnetic plug and in the oil filter is equal to or greater than an area of 0.08 in^2 (50 mm^2), removal of the main gearbox before further flight and replacement with an airworthy main gearbox is required.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 18, 1997 to all known U.S. owners and operators of Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–23–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 97–15–15 Eurocopter France: Amendment 39–10313. Docket No. 97–SW–23–AD.

Applicability: Model SA–365N, SA–365N1, and SA–366G1 helicopters, with main gearbox, part number (P/N) 365A32–6000–00, 365A32–6000–02, 365A32–6001–00, or 366A32–0001–00, installed, but not modified in accordance with MOD 077244, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the gear shaft which could lead to failure of the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter, accomplish the following:

(a) Following each flight, when the main rotor is stopped, inspect the main gearbox magnetic plug (magnetic plug) for ferrous chips.

(b) Following the last flight of each day, or at intervals not to exceed 12 hours time-in-service, whichever occurs first, inspect the main gearbox oil filter (oil filter) for ferrous chips.

(c) If the total surface area covered by ferrous chips on the magnetic plug and in the oil filter is equal to or greater than 0.08 in^2

(50mm²), remove the main gearbox before further flight and replace with an airworthy main gearbox.

(d) If the inspections specified in paragraph (a) or (b) of this AD reveal the presence of any ferrous chips on either the magnetic plug or in the oil filter, or if abnormal vibrations are reported by the flight crew, then perform main gearbox vibration measurements on the ground.

Note 2: MET work card CT 05.53.00.221 describes an appropriate main gearbox vibration measurement technique for model SA–365N and SA–365N1 helicopters. MET work card CT 05.53.00.220 is applicable for model SA–366G1 helicopters.

(e) If vibration levels above the helicopter's basic data are identified at a frequency of 26.07HZ, replace the main gearbox with an airworthy gearbox before further flight.

Note 3: Interpretation of results is made by comparing the reading with previously obtained data when the aircraft vibration level was acceptable (i.e., reading performed upon aircraft acceptance or when main gearbox was installed).

(f) Installation of MOD 077244 constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(h) Special flight permits will not be issued.

(i) This amendment becomes effective on February 23, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 97–15–15, issued July 18, 1997, which contained the requirements of this amendment.

Note 5: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD 97–145–042(AB), dated July 10, 1997, and AD 97–164–020(AB), dated July 16, 1997.

Issued in Fort Worth, Texas, on January 30, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Office.

[FR Doc. 98–2969 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 98–004]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between October 1, 1997 and December 31, 1997, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** may not have been possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between October 1, 1997 and December 31, 1997, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations is available on request, from the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be viewed and copied in room 3406 of the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Christopher S. Keane at (202) 267–6233 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Post (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1997 and December 31, 1997, unless otherwise indicated.

Dated: February 2, 1998.

Michael L. Emge,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

COTP docket	Location	Type	Effective date
Houston/Galveston 97–007	Houston, TX	Safety Zone	11/12/97
Houston/Galveston 97–008	Houston, TX	Safety Zone	12/14/97
Houston/Galveston MSU 97–107	Freeport, TX	Safety Zone	11/25/97
Houston/Galveston MSU 97–109	San Leon, TX	Safety Zone	12/8/97
Huntington 97–006	Kanawha River, M. 72.5 to 74.5	Safety Zone	11/20/97

QUARTERLY REPORT—Continued

COTP docket	Location	Type	Effective date
Jacksonville 97–053	Amelia Island, Florida	Security Zone	10/31/97
New Orleans 97–018	Lwr Mississippi River, M. 94 to M. 95	Safety Zone	12/31/97
Port Arthur 98–01	Port Neches, TX	Safety Zone	12/6/97
Port Arthur 98–03	Port Arthur, TX	Safety Zone	12/25/97
Port Arthur 98–04	Sabine Pass Jetty Channel	Safety Zone	12/30/97
San Diego 97–005	San Diego, CA	Safety Zone	10/3/97
San Diego 97–006	Mission Bay, San Diego, CA	Safety Zone	11/2/97
San Francisco Bay 97–011	San Francisco Bay, CA	Safety Zone	10/9/97
San Francisco Bay 97–012	San Francisco Bay, CA	Safety Zone	10/11/97
San Francisco Bay 97–013	San Francisco Bay, CA	Safety Zone	10/11/97
San Juan 97–053	San Juan, Puerto Rico	Safety Zone	10/28/97
San Juan 97–055	San Juan, Puerto Rico	Safety Zone	11/5/97
San Juan 97–057	San Juan, Puerto Rico	Safety Zone	11/6/97
San Juan 97–058	San Juan, Puerto Rico	Safety Zone	11/13/97
San Juan 97–066	San Juan, Puerto Rico	Safety Zone	12/17/97
San Juan 97–068	San Juan, Puerto Rico	Safety Zone	12/21/97

QUARTERLY REPORT

District docket	Location	Type	Effective date
01–97–102	Portland, ME	Safety Zone	10/10/97
01–97–103	Glastonbury, CT	Safety Zone	10/5/97
01–97–103	East River, NY	Security Zone	11/2/97
01–97–105	Uncasville, CT	Safety Zone	10/12/97
01–97–106	Portland, ME	Safety Zone	10/27/97
01–97–107	Penobscot River, Bangor, ME	Safety Zone	10/17/97
01–97–108	Bangor, ME	Safety Zone	10/22/97
01–97–110	Boston, MA	Security Zone	11/1/97
01–97–114	Boston, MA	Security Zone	10/31/97
01–97–116	Bangor, ME	Safety Zone	11/12/97
01–97–117	Portland, ME	Safety Zone	11/7/97
01–97–118	Portland, ME	Safety Zone	12/5/97
01–97–119	Bangor, ME	Safety Zone	11/14/97
01–97–121	Bath, ME	Safety Zone	12/3/97
01–97–122	Bath, ME	Safety Zone	12/8/97
01–97–123	Hudson River, New York Harbor	Safety Zone	12/31/97
01–97–129	East River, New York	Security Zone	12/9/97
01–97–130	Portland, ME	Safety Zone	12/19/97
01–97–132	Portland, ME	Safety Zone	12/22/97
05–96–075	Ocean City, MD	Special Local	10/11/97
05–97–078	West Point, VA	Safety Zone	10/4/97
05–97–081	Cape Fear River, NC	Safety Zone	11/1/97
05–97–083	Cape Fear River, NC	Safety Zone	11/13/97
05–97–088	Camp Lejeune, NC	Safety Zone	12/14/97
05–97–089	Camp Lejeune, NC	Safety Zone	12/16/97
07–97–041	Islamorada, FL	Special Local	10/4/97
07–97–050	Broward County, Florida	Special Local	12/13/97
07–97–054	Pompano Beach, Florida	Special Local	12/14/97
08–97–047	Galveston, TX	Special Local	12/20/97
09–97–029	Grand Haven, MI	Safety Zone	10/28/97
09–97–030	Illinois Waterway	Security Zones	11/6/97
09–97–032	Chicago River	Safety Zone	12/31/97
11–97–011	Colorado River	Special Local	12/29/97
13–97–028	Columbia River, Richland, WA	Safety Zone	12/31/97

[FR Doc. 98–2984 Filed 2–5–98; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–001]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Onslow Beach Swing Bridge across the Atlantic Intracoastal Waterway (AICW), mile 240.7, at Camp Lejeune, North Carolina. Beginning at 7 a.m. on February 2, through 7 a.m. on February 5, 1998, the bridge will be maintained in the closed position. This closure is necessary to facilitate extensive repairs and maintain the bridge's operational integrity.

DATES: This deviation is effective from 7 a.m. on February 2, 1998, until 7 a.m. on February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Onslow Beach Swing Bridge and adjoining property are part of the Marine Corps Base (USMC) at Camp Lejeune military reservation, located adjacent to Jacksonville, North Carolina. On December 11, 1997, a letter was forwarded to the Coast Guard by the USMC requesting a temporary deviation from the normal operation of the bridge. The current regulations in Title 33 Code of Federal Regulations, Section 117.5, require the Onslow Beach Swing Bridge to open on signal at all times.

The USMC has hired contractors to replace the submarine cable at the bridge that was unintentionally cut in May 1997, and to make various additional repairs to eliminate mechanical and operational problems the bridge has experienced since January 1997. The bridge repairs will immobilize operation of the swing bridge entirely, including the backup system which uses hydraulic components typically used when the electrical systems are non-operational. Additionally, tug boats, cranes, and barges positioned at the site may impede vessel traffic that could pass under the bridge.

In the winter months, the AICW is primarily used by commercial light-draft vessels and tows unable to navigate long stretches in the open ocean. Based on bridge logs from 1993 through 1997 for the month of February, the bridge averaged approximately five openings per day for vessels. The USMC will provide wide dissemination of notification to the public, and the Coast Guard has informed the known commercial users of the AICW of the bridge closure so that these vessels can arrange their transits to avoid being negatively impacted by the temporary deviation.

From 7 a.m. on February 2, until 7 a.m. on February 5, 1998, this deviation allows the Onslow Beach Swing Bridge across the AICW to remain closed.

Dated: January 16, 1998.

J. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–2982 Filed 2–5–98; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–091]

Drawbridge Operation Regulations; Cambridge Harbor

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation of 33 CFR 117.549, the regulations governing the operation of the MD 342 (currently known as MD 795) drawbridge across Cambridge Harbor, mile 0.1, Cambridge, Maryland. Beginning February 16, 1998, through March 9, 1998, this deviation allows the bridge to remain in the closed position. This closure is necessary to allow the Maryland Department of Transportation (MDOT) to remove and fabricate new bearings for the lift equipment and to replace the decking.

DATES: This deviation is effective from February 16, 1998 through March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: On March 18, 1996, MDOT sent a letter to the Coast Guard requesting a temporary deviation from the normal operation of the bridge in order to accommodate maintenance work. The maintenance involves removing the existing bearings and fabricating new ones, and the installation of new decking. The bridge must remain in the closed position to perform the maintenance. On November 20, 1997, MDOT confirmed the work and time schedule for the proposed maintenance project.

Cambridge Harbor proceeds inland approximately 100 years beyond the bridge; however, closure of the drawbridge over Cambridge Harbor will not significantly disrupt vessel traffic, as confirmed by a meeting held on October 30, 1997 between MDOT and local mariners. Presently, the draw is required to open on signal from 6 a.m. to 8 p.m. From 8 p.m. to 6 a.m., the draw remains closed to navigation. From noon to 1 p.m., Monday through Friday, the draw need not open for the passage of vessels.

From February 16, 1998, to March 9, 1998, this deviation allows the closure of the Cambridge Harbor Bridge.

Dated: January 16, 1998.

J. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–2981 Filed 2–5–98; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0040a; FRL–5956–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District; Monterey Bay Unified Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to incorporate changes to the definition of VOC and exempt compound list in KCAPCD, MBUAPCD,

and VCAPCD rules into the SIP to be consistent with the revised federal definition.

DATES: This action is effective on April 7, 1998 unless adverse or critical comments are received by March 9, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for these rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 290, Bakersfield, CA 93301.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include KCAPCD Rule 410.1, Architectural Coatings; KCAPCD Rule 410.5, Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations; KCAPCD Rule 411, Storage of Organic Chemicals; KCAPCD Rule 414.5, Pump and Compressor Seals at Petroleum Refineries and Chemical Plants; MBUAPCD Rule 101, Definitions; and VCAPCD Rule 2, Definitions. The following table contains the adoption and submittal dates of each rule:

Rule	Adopted	Submitted
KCAPCD 410.1	3/7/96	5/10/96
KCAPCD 410.5	3/7/96	5/10/96
KCAPCD 411	3/7/96	5/10/96
KCAPCD 414.5	3/7/96	5/10/96
MBUAPCD 101	11/13/96	3/3/97
VCAPCD 2	4/9/96	7/23/96

Background

The State of California submitted the above rules for inclusion into its SIP. These SIP revisions add several compounds to the Districts' list of exempt organic compounds that EPA has determined to have negligible photochemical reactivity. Thus, EPA is finalizing the approval of the revised definitions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act).

EPA Evaluation and Action

This action is necessary to make the VOC definitions in the rules from KCAPCD, MBUAPCD, and VCAPCD consistent with the federal definition. This action will result in a more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist Districts in avoiding exceedences of the ozone health standard by focusing control efforts on compounds which are actual ozone precursors.

The VOC definition and list of exempt compounds have been deleted from the following KCAPCD rules. These rules have been revised to reference KCAPCD Rule 102, Definitions, approved on October 7, 1996 (61 FR 52297):

- Rule 410.1 Architectural Coatings
- Rule 410.5 Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations
- Rule 411 Storage of Organic Chemicals
- Rule 414.5 Pump and Compressor Seals at Petroleum Refineries and Chemical Plants

The following revisions were made in MBUAPCD Rule 101, Definitions:

- The format of the rule was changed adding sections for purpose, applicability, exemptions, and effective date.
- The definition for ''volatile organic compound'' and an ''exempt compound list'' have been added. Other District rules and regulations will reference these definitions.

VCAPCD Rule 2, Definitions, has been amended to include acetone, ethane, parachlorobenzotrifluoride (PCBTF), and volatile methylated siloxanes (VMS) on the list of ''exempt organic compounds''.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 7, 1998, unless, by March 9, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 7, 1998.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic

reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 15, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(231)(i)(B)(*2*), (239)(i)(D)(*1*), and (244) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(*2*) Rule 410.1, Rule 410.5, Rule 411, and Rule 414.5 amended on March 7, 1996.

* * * * *

(239) * * *

(i) * * *

(D) * * *

(*1*) Rule 2 amended on April 9, 1996.

* * * * *

(244) New and amended regulations for the following APCDs were submitted on March 3, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 101 revised on November 13, 1996.

* * * * *

[FR Doc. 98–2871 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 8560 and 8372

[AZ–010–01–1210–04]

Paria Canyon-Vermilion Cliffs Wilderness, AZ–UT: Visitor Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to implement recreation permit requirements.

SUMMARY: The Bureau of Land Management (BLM) has revised visitor rules for the Paria Canyon, Buckskin Gulch, Wire Pass, and the Coyote Buttes Special Management Area portions of the Paria Canyon-Vermilion Cliffs Wilderness, AZ–UT. The objectives of the new rules are to prevent further damage to wilderness resources and to improve visitors' opportunities to enjoy the area. The rules represent the minimum level of visitor management needed to accomplish those objectives.

BLM will drop certain ineffective rules and policies, carry forward those that are appropriate, and implement several new rules.

DATES:

Existing Rules/Policies To Be Dropped. Effective as of March 1, 1998.

New General Rules. Effective as of March 1, 1998.

New Specific Rules for Paria Canyon/Buckskin Gulch/Wire Pass/Coyote Buttes. Transition to the new rules will be as follows:

a. December 24, 1997 through February 28, 1998: All existing rules/policies continue.

b. February 1, 1998 through February 28, 1998: Reservation requests for dates on or after March 1, 1998 through one year from the month of application will be accepted using new visitor limits.

c. March 1, 1998: New visitor rules apply.

New Rules for Commercial Guides and Organizations.

a. Effective as of March 1, 1998.

b. Applications for Special Recreation Permits will be accepted at any time.

ADDRESSES: The public may examine material pertaining to the action at:

1. BLM, Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790.

2. BLM, Kanab Resource Area, 318 North 100 East, Kanab, Utah 84741

3. Electronic Access Addresses www.for.nau.edu/paria-permits/

FOR FURTHER INFORMATION CONTACT: Tom Folks, (435) 688–3264 or Janaye Byergo, (435) 644–2672.

SUPPLEMENTARY INFORMATION:

I. Existing Rules/Policies to be Dropped
II. Existing Rules/Policies Carried Forward
III. New Rules

I. Existing Rules/Policies to be Dropped

a. Group size is limited in Coyote Buttes to no more than 4 persons.

b. No more than 2 groups in Coyote Buttes per day.

c. Pets must be leashed.

d. Visitors pay fees after reservations are made for Coyote Buttes.

e. Overnight visitors to Paria Canyon, Buckskin Gulch, and Wire Pass pay fee at self-service stations at the trail heads.

f. The number of overnight visits to Paria Canyon, Buckskin Gulch, and Wire Pass are not limited.

II. Existing Rules/Policies Carried Forward

General

a. BLM will operate a year-round fee/permit and reservation system.

b. Use fees are collected for all visitors to Paria Canyon, Buckskin Gulch, Wire Pass and Coyote Buttes.

c. For visitors with current Golden Age or Golden Access cards, use fees are discounted 50% for cardholders only. Each cardholder's card number must be provided when making reservations.

d. Golden Eagle passes do not apply to use fees, but are only for entrance fees to areas such as national parks or some national conservation areas.

e. To keep fees as low as possible, refunds, date changes, and group size changes will not be made. Processing these types of actions substantially increases the cost of administration, which requires charging higher fees to recover costs. Be sure of trip plans before making application and paying fees.

f. American Indian Access Rights—If it is determined that the canyons of Paria or Coyote Buttes are sacred or traditional areas to local Native American populations, then Native Americans are exempted from paying fees.

g. Hikers must register at the trail heads when entering or leaving the area.

h. Campfires and burning of trash or toilet paper are not allowed in the canyons or Coyote Buttes.

i. Disturbing or defacing prehistoric or historic ruins, sites, artifacts or rock art panels is prohibited by law.

j. All trash associated with an individual or group trip, including used toilet paper, must be packed out by that individual or group.

k. The wilderness is closed to motor vehicles, motorized equipment, and other forms of mechanical transport, including bicycles and hang gliders.

l. Hunters (during hunting season, in possession of a valid state license and permit/tag for the areas), livestock grazing permittees, and employees, contractors, and volunteers working onsite for a state or federal agency do not count against the total daily visitor limits, nor are they subject to fee requirements. However, these individuals are required to comply with group size limitations. They are subject to any closure or other restriction implemented to protect sensitive resources.

m. BLM may, based on monitoring, temporarily or permanently close areas of Coyote Buttes or the canyons in order to protect sensitive resources.

Specific to White House Campground

a. For campground use, visitors deposit fees at the self serve fee station located at the campground. Each group is required to fill-out a fee envelope and obtain fee receipt. The fee schedule is: $5.00/site/night

Specific to Paria Canyon, Buckskin Gulch, Wire Pass

a. Day-use visitors to these areas deposit fees at self serve fee stations located at White House, Buckskin Gulch, and Wire Pass Trail heads. No reservations for day-use are needed. Each trip leader is required to fill-out a fee envelope and obtain fee receipt. The fee schedule is: $5.00/person/day.

b. Group size for all use in the canyons is limited to ten persons per group. All groups larger than ten must split up and begin hiking on different days. These groups are not permitted to rejoin during the trip. Minimum distance is two miles apart.

c. Visitors staying one or more nights in the canyons must camp only in existing campsites or, if necessary and safe, on shoreline terraces.

d. Wrather Canyon is closed to camping.

e. All camp, latrine, and pack stock restraint areas must be at least 200 feet from springs.

f. Cutting of trees, limbs, or other plants to make camp ''improvements'' is prohibited.

g. Private recreational use of horses, burros, llamas, and goats is allowed in Paria Canyon. Horses must stay on the shoreline terraces.

h. The use of horses in conjunction with an approved Special Recreation Use Permit is allowed only in Paria Canyon from Bush Head Canyon downstream to the wilderness boundary.

Specific to Coyote Buttes

a. The Coyote Buttes Special Management Area (SMA) is limited to day-use only. No overnight camping in the SMA.

b. Reservations are required for day-use in this area.

c. All reservations are issued on a first-come, first-served basis.

d. Each trip leader is issued a permit.

e. Day-use visitors pay fees to BLM's fee project partner, Northern Arizona University, via fax, or mail. A permit is then mailed to you. The fee schedule is: $5.00/person (permit required).

f. No private recreational or commercial use of horses, burros, llamas, and goats is allowed.

g. Walk-in permits (no reservation) may be available at times. Reservations for available walk-ins may be made only at the Paria Information Station up to seven days prior to the available date.

Specific to Commercial Guides and Organizations

a. Organized groups, companies, or individuals who use the public lands for business or financial gain or benefit from salaries, or support other programs (ie; professional guides, Sierra Club, schools, college clubs, Museum or Elder Hostel Sponsored trips, etc.) are considered commercial users.

b. Commercial users intending to operate within the wilderness must obtain a Special Recreation Use Permit (43 CFR 8372) prior to operating on or utilizing public lands.

III. New Rules

General

a. Dogs are allowed in the canyons and Coyote Buttes with the following requirements:

(1) Owners pay a daily use fee: $5.00/day for each dog (fees are not required for guide dogs for the blind.)

(2) Owners be informed of rules and restrictions

(3) Owners agree to keep dogs under control at all times (to prevent harassment of wildlife and visitors).

(4) Owners dispose of dog waste with the same method used for human waste.

(5) All dogs must be on a leash in the Glen Canyon National Recreation Area portion of lower Paria Canyon.

b. Visitors to areas requiring reservations must pay fees at the time reservations are made with BLM's fee project partner, Northern Arizona University, via fax or mail. A permit is then issued via mail.

Specific to Paria Canyon, Buckskin Gulch, Wire Pass

a. Reservations are required for overnight use in these areas.

b. All reservations are issued on a first-come, first-served basis.

c. Each trip leader is issued a permit.

d. Overnight use in Paria Canyon, Buckskin Gulch, and Wire Pass is limited to a combined trail head entry total of no more than 20 persons per day.

e. No fees are charged for children 12 years and under for day-use in Paria Canyon, Buckskin Gulch, and Wire Pass.

f. Walk-in permits (no reservation) for overnight use may be available at times. Reservations for available walk-ins may be made only at the Paria Information Station up to seven days prior to the available date.

Specific to Coyote Buttes

a. The Coyote Buttes SMA is divided near Top Rock Spring into the Southern and Northern Coyote Buttes SMAs.

b. Visitor use in the Southern Coyote Buttes Special Management Area is limited to no more than ten persons per day.

c. Visitor use in the Northern Coyote Buttes Special Management Area is limited to no more than ten persons per day.

d. The maximum group size limit in Coyote Buttes is six persons.

e. A separate reservation and fee payment must be made for each day requested.

Specific to Commercial Guides and Organizations

a. Commercial users may, after receiving authorization through procedures set forth in 43 CFR 8372, operate in the canyons and Coyote Buttes under one or both of the following modes:

(1) Authorized commercial users will depend on visitors to contract their services when visitors have either (a) successfully acquired a non-commercial use permit for areas requiring reservations/permits or, (b) desired a guide for areas not requiring reservations, such as day-use in the canyons or the remaining non-fee/non reservation portions of the wilderness.

(2) All authorized guides will be listed in various forms of BLM hiking information media, with the information sent to successful permit holders. Commercial guides may market their availability as guides. As guides are retained for service under this mode, they will not count against the group size limit or the total visitor limit for the given day. Parties will be limited to one guide each under this option.

b. For areas requiring reservations/permits, commercial users compete with non-commercial visitors for permits on a first-come, first-served basis. Commercial users reserve no more than one entry day per week under this option. Fees for reserved dates will be paid at the time of reservation. For permits reserved under this option, guides will count against both the group size and the total visitor limit for the given day. BLM would not limit the number of guides per permit under this option.

Dated: January 26, 1998.

Roger G. Taylor,

Arizona Strip Field Manager.

[FR Doc. 98–2960 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–32–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–232; RM–9191]

Radio Broadcasting Services; Eureka, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 228C3 to Eureka, Montana, as that community's first local FM broadcast service in response to a petition filed by William G. Brady d/b/a KHJ Radio. *See* 62 FR 61953, November 20, 1997. The coordinates for Channel 228C3 at Eureka are 48–52–54 and 115–02–54. Although there is no site restriction for the allotment, our analysis indicates that Channel 228C3 at Eureka is short-spaced to vacant Channel 226C, Cranbrook, British Columbia, Canada. Therefore, concurrence from the Canadian government has been obtained for the allotment of Channel 228C3 at Eureka as a specially negotiated short-spaced allotment. With this action, this proceeding is terminated. A filing window for Channel 228C3 at Eureka will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–232, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Eureka, Channel 228C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2987 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 272A and adding Channel 272C2 at Brinkley.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 292A and adding Channel 292C3 at Melbourne and by removing Channel 269C3 and adding Channel 269A at Vero Beach.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 299A and adding Channel 300C3 at Valdosta.

5. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 237A and adding Channel 235C1 at Concordia.

6. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 290A and adding Channel 237A at Wilmore.

7. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 225C3 and adding Channel 225C2 at Springhill.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 266C and adding Channel 266C1 at Luverne and by removing Channel 221A and adding Channel 221C3 at Madison.

9. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 268C1 and adding Channel 270C1 at Taos.

10. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 223C3 and adding Channel 222C3 at Nags Head, by removing Channel 293C and adding Channel 293C1 at Salisbury and by removing Channel 294A and adding Channel 294C2 at Semora.

11. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 289C1 and adding Channel 289C at Decatur.

12. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 281C and adding Channel 281C1 at Yakima.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2986 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–20; RM–8979]

Radio Broadcasting Services; Yarnell, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258A to Yarnell, Arizona, as that community's first local aural transmission service, in response to a petition filed on behalf of Yarnell Communications. *See* 62 FR 3850, January 27, 1997. Coordinates used for Channel 258A at Yarnell are 34–13–18 and 112–44–48. As Yarnell is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to this allotment was obtained. With this action, the proceeding is terminated.

DATES: Effective March 16, 1998. A filing window for Channel 258A at Yarnell, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, 202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–20, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Yarnell, Channel 258A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, olicy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2988 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–46; RM–8990]

Radio Broadcasting Services; Boonville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Boonville, Califorina, as that community's first local aural transmission service, in response to a petition filed on behalf of Boonville Broadcasting Company. *See* 62 FR 6926, February 14, 1997. Coordinates used for Channel 241A at Boonville are 39–03–42 and 123–31–47. With this action, the proceeding is terminated.

DATES: Effective March 16, 1998. A filing window for Channel 241A at Boonville, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commisison in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202)

418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–46, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Boonville, Channel 241A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2991 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–170; RM–8980]

Television Broadcasting Services; San Bernardino and Long Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 18– from San Bernardino to Long Beach, California, and modifies the license of KSLS, Inc. for Station KSCI(TV) to specify operation on Channel 18– at Long Beach, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 62 FR 42225, August 6, 1997. The reallotment of Channel 18– to Long Beach will provide the larger community with its first local television transmission service while retaining local television service at San Bernardino. Coordinates used for Channel 18– at Long Beach are 34–11–15 and 117–41–54. Although Long Beach is located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican government to the reallotment of Channel 18– from San Bernardino was not required based upon the retention of the existing channel and transmitter site of Station KSCI(TV). However, as a result of the granted reallotment request, the Mexican government will be advised of the change to the TV Table of Allotments. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–170, adopted January 14, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under California, is amended by removing Channel 18– at San Bernardino, and adding Long Beach, Channel 18–.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2990 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 95–183; PP Docket No. 93–253; FCC 97–391]

Service and Auction Rules for the 38.6–40.0 GHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Report and Order portion of the Second Notice of Proposed Rule Making and Report and Order, the Commission amends rules to facilitate more effective use of the 39 GHz band, by implementing a number of improvements such as licensing by Basic Trading Areas (BTAs) and employing competitive bidding procedures as a means for choosing among mutually exclusive license applicants. In addition, the Commission concludes that the regulatory framework for the 39 GHz band should be expanded to include service rules for mobile operations. Such flexibility will promote competition by increasing both the diversity of potential service offerings and the number of providers that can offer any service. Finally, the Commission addresses those 39 GHz applications held in abeyance pursuant to a processing freeze.

EFFECTIVE DATE: April 7, 1998.

ADDRESSES: 1919 M Street, N.W., Room 222, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: (For service and licensing rules), Susan Magnotti, Public Safety and Private Wireless Division, (202) 418–0871; (for auction rules and procedures) Christina Eads Clearwater, Auctions and Industry Analysis Division, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Report and Order portion of the Commission's Second Notice of Proposed Rule Making and Report and Order in ET Docket No. 95–183 and PP Docket No. 93–253, adopted October 24, 1997 and released November 3, 1997. The complete text of the Second Notice of Proposed Rule Making and Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Report and Order in the Second Notice of Proposed Rulemaking and Report and Order

1. In the Report and Order portion of the Second Notice of Proposed Rulemaking and Report and Order, the Commission amends parts 1 and 101 of title 47, Code of Federal Regulations, to facilitate more effective use of the 39 GHz band. The Commission implements a number of improvements such as licensing by Basic Trading Areas (BTAs) and employing competitive bidding procedures as a means for choosing among mutually exclusive license applicants. (Rand McNally is the copyright owner of the Basic Trading Area and Major Trading Area Listing, which lists the counties contained in each BTA, as embodied in Rand McNally's Trading Areas System diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide.) In addition, it concludes that its regulatory framework should be expanded to include service rules for mobile operations in the 39 GHz band. Thus, 39 GHz service providers will be better positioned to respond to the dictates of the marketplace. Moreover, such flexibility will promote competition by increasing both the diversity of potential service offerings and the number of providers that can offer any service. Finally, the Commission addresses those 39 GHz applications held in abeyance pursuant to the processing freeze imposed in the Notice of Proposed Rulemaking and Order, (NPRM and Order), 61 FR 02452 (January 26, 1996) as modified in its subsequent Memorandum Opinion and Order, 62 FR 14015 (March 25, 1997).

2. In the NPRM and Order, the Commission considered permitting an array of fixed services in the 37 GHz band. Subsequently, Motorola and other satellite entities expressed their interest in this band as well, and similar interests were expressed for other high gigahertz bands. Accordingly, the Commission decided to address the 36.0–51.0 GHz bands in a unified manner, and In the Matter of Allocation and Designation of Spectrum For Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz, and 48.2–50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5–42.5 GHz Frequency Band, Allocation of Spectrum in the 46.9–47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0–38.0 GHz and 40.0–40.5 GHz for Government Operations, IB Docket No. 97–95, Notice of Proposed Rulemaking, FCC 97–85 (rel. March 24, 1997) (''36–51 GHz NPRM''), Notice of Proposed Rulemaking, 62 FR 16129 (April 4, 1997), the Commission sought comment on its proposals for these frequency bands. However, because the 39 GHz band is significantly licensed and subject to additional applications for license, the Commission has concluded that it is in the public interest to refine its rules at this time to allow existing and new licensees to maximize the array of services they can provide to the public. In addition to providing support for existing services (*e.g.*, broadband PCS, cellular, and other commercial and private mobile radio operations), 39 GHz band providers plan to use this spectrum to satisfy needs for a host of other fixed services, such as: (1) Wireless local loops, (2) call termination or origination services to long distance companies, (3) connection of the customers of a competitive access provider (''CAP'') or a local exchange carrier (''LEC'') to its fiber rings, (4) connection and interconnection services to private networks operated by business and government as well as other institutions, (5) Internet access, and (6) cable headend applications. In some cases, 39 GHz band licensees are already using the spectrum for such purposes.

I. Decision—Service Rules

A. Service Areas

3. The Commission adopts its proposal in the NPRM and Order to license new 39 GHz licenses based on pre-defined geographic areas rather than the applicant-defined rectangular areas currently authorized in the 39 GHz band. Commission-defined service areas will foster efficient utilization of 39 GHz spectrum in an expeditious manner and will provide a more orderly structure for the licensing process. The Commission therefore rejects the suggestion by some commenters that it continue licensing the 39 GHz band by permitting applicants to define their own service areas. For those interested in tailoring a service area to other smaller or larger markets, the Commission notes that, concurrently with the instant proceeding, it is also proposing service rules to allow partitioning and disaggregation by 39 GHz licensees.

4. In choosing the most appropriate definition for 39 GHz service areas, the Commission observes that its conclusion that this band is auctionable (explained below in Discussion Section A) requires it to apply the criteria of section 309(j)(4)(C) of the Communications Act of 1934, as amended, (''Act'' or ''Communications Act''). This section mandates that the Commission consider certain factors when establishing service areas for auctionable services. The first of these criteria is that the service area promote an equitable distribution of licenses and services among geographic areas. The Commission believes that use of BTAs fulfills this objective because they are intended to represent the natural flow of commerce, comprising areas within which consumers have a community of interest. As a result, the Commission believes that BTAs are representative of the geographic areas in which the types of services envisioned for the 39 GHz band are likely to be provided. The second criterion the Commission is required to consider is whether the service area is appropriate to provide economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission believes that BTAs are sufficiently large to accommodate the array of services proposed for the 39 GHz band in a manner which provides opportunities for a variety of licensees. The BTA-sized service areas for support spectrum will be compatible with the primary service areas defined for broadband PCS providers. The Commission also believes that other services, such as telephony, would find sufficient population within BTAs to support the pursuit of various business opportunities. In addition, the Commission believes that other services anticipated for 39 GHz spectrum, such as wireless local loop, competitive access, local exchange, and Internet access, are of a local nature for which use of BTAs also would be appropriate. Moreover, the Commission believes that use of BTAs as the service area definition for the 39 GHz band will also satisfy the third criterion of section 309(j)(4)(C), which requires that the Commission establish service areas in a manner which will promote investment in and rapid deployment of new technologies and services. Accordingly, the Commission agrees with the commenters who advocate the use of BTAs for licensing the 39 GHz band.

5. The Commission disagrees with those commenters who contend that the service areas for the 39 GHz band should be based on larger geographic areas. The Commission believe that BTAs offer a sufficiently large service area to allow applicants flexibility in designing a system to maximize population coverage and to take advantage of economies of scale necessary to support a successful

operation. Moreover, to the extent that 39 GHz licensees desire to provide service over a larger geographic region, the rules the Commission adopt today will allow them to aggregate BTAs. The Commission does not believe, however, nor does the record indicate, that the majority of licensees will seek to provide service over vast geographic regions. Thus, the Commission believes that larger service areas would be inappropriate for the 39 GHz band.

6. Finally, although GTE expressed some concern that any Rand McNally licensing agreement should be reasonable, the Commission does not believe that the existence of Rand McNally's copyright interest in the BTA listings will present an impediment to use of these areas by 39 GHz band licensees. The Commission expects that potential licensees and Rand McNally will execute a licensing agreement similar to those already undertaken in other contexts. In particular, Rand McNally has already licensed the use of its copyrighted MTA/BTA listing and maps for a number of services, such as PCS, 800 MHz Special Mobile Radio (SMR) service, and Local Multipoint Distribution Service (''LMDS''), and the company has also reached an agreement with the American Mobile Telecommunications Association (''AMTA'') for a blanket copyright license for the conditional use of copyrighted material in the 900 MHz SMR service. These agreements authorize the conditional use of Rand McNally's copyrighted material in connection with these particular services, require interested persons using the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership, and provide for a payment of a license fee to Rand McNally.

7. The Commission encourages interested parties and Rand McNally to explore the possibility of entering into blanket license agreements to cover the 39 GHz band. The Commission notes that a 39 GHz BTA authorization grantee who does not obtain a copyright license through a blanket license agreement (or some other arrangement) with Rand McNally for use of the copyrighted material may not rely on the grant of a BTA-based authorization from the Commission as a defense to any claim of copyright infringement brought by Rand McNally against such grantee. The MTA/BTA Listings, the MTA/BTA Map and the license agreements noted above are available for public inspection at the Wireless Telecommunications Bureau, Reference Room, Room 5322, 2025 M Street, N.W., Washington, D.C., 20554.

B. Permissible Operations in the 39 GHz Band

8. In the NPRM and Order, the Commission raised questions about expanding the array of services provided in the 39 GHz band to include point-to-multipoint and mobile operations. Although these services are permitted under the Table of Allocations for this spectrum band, the only type of service authorized under the Commission's current service rules is point-to-point operations. The 39 GHz band is currently being licensed and used for non-Government, terrestrial-based, fixed, point-to-point microwave service. In addition, there are no satellite operations in the 39 GHz band. Accordingly, the Commission's efforts to improve the licensing and service rules for non-Government service in this band are not affected by any existing assignments under different allocations. The Commission takes note of the fact that the 39 GHz band contains the following allocations:

- Domestically, the 38.6–39.5 GHz portion of the band is allocated for non-Government use to provide fixed and mobile services and FSS (space-to-Earth) on a primary basis. In addition to these primary allocations, the 39.5–40.0 GHz portion of the band is allocated on a shared basis between Government and non-Government users on a primary basis for FSS (space-to-Earth) and Mobile-Satellite Service (''MSS'') (space-to-Earth). Government use of 39.5–40.0 GHz is limited to military systems.
- Internationally, the 39 GHz band is allocated on a co-primary basis for fixed and mobile services and FSS (space-to-Earth), and on a secondary basis for use by the Earth-Exploration Satellite service (space-to-Earth). The 39.5–40.0 GHz portion of the band is also allocated on a primary basis for MSS (space-to-Earth).

9. In the NPRM and Order, the Commission requested public comment on whether it should also establish service rules which would permit point-to-multipoint and mobile services. Many parties commenting in this proceeding have encouraged us to allow them flexibility to determine the best uses of the 39 GHz band; in particular, they have requested authority to provide point-to-multipoint and mobile service, as the technology to provide these services becomes available. The Commission has considered these comments in connection with the recent amendment to section 303 of the Communications Act concerning criteria it must consider when permitting flexible use of the electromagnetic spectrum, which was enacted after the NPRM and Order and after the comment period had been completed in this proceeding.

i. Point-to-Multipoint Operations

10. Given the fact that the 39 GHz service is still in its early stages of development, the Commission believes that it is imperative that it not take any regulatory actions that would hamper the service's continued development and growth potential. The Commission notes, as a general matter, that the type of services proposed for the 39 GHz band by the commenters can be offered on both a point-to-point and point-to-multipoint basis. Although a few commenters contend that the Commission should defer allowing point-to-multipoint operations in this band until specific technical rules are adopted to protect against interference to point-to-point users (such as equipment specifications), there is no evidence in the record that point-to-point and point-to-multipoint operations are inherently incompatible in the same band or licensing area. Therefore, the Commission will adopt 39 GHz rules for point-to-multipoint operations.

ii. Mobile Operations

11. The Commission has considered the comments of several parties requesting that it establish rules to permit mobile operations in this band. Parties opposing authorization of mobile services in the 39 GHz band argue that there are no technical parameters to protect both fixed and mobile operations from mutual interference.

12. After careful review of the record evidence, the Commission has decided to permit implementation of mobile operations in the 39 GHz band. Permitting such flexibility will enable providers to modify their offerings quickly and efficiently to provide the services that consumers demand and that technology makes possible. Thus, providers will be better positioned to respond to the dictates of the marketplace. Moreover, such flexibility will promote competition by increasing both the diversity of potential service offerings and the number of providers that can offer any service. Thus, the requirements of section 303(y) are fulfilled because both technological development and investment therein will be stimulated. Moreover, this broad view of the character of 39 GHz service comports with the development of the industry thus far because parties are developing a wide variety of fixed services and some parties may be developing, or planning to develop,

mobile services technology capable of operating without interference to fixed facilities in this band. Accordingly, the Commission is convinced that establishing rules for mobile operations will best serve the public interest. In addition, the Commission observes that in a number of other contexts it has authorized licensees to provide both mobile and fixed operations within the same service—*e.g.*, General Wireless Commercial Services (''GWCS''), the Commercial Mobile Radio Services (''CMRS''), and the Interactive Video and Data Service (''IVDS'').

13. For the most part, the objections that have been raised to mobile operations in this proceeding are misplaced. Since the service is licensed on an exclusive, area-wide basis (whether by incumbents' rectangular service areas or by new licensees' BTAs), the issue of technical compatibility of fixed and mobile operations within a service area is one that can and should be resolved by the licensee. To the extent that a licensee has the technological wherewithal to provide one or the other, or both, types of services, the licensee will do so in a manner that the market directs. Governmental direction in this service is unnecessary except to the extent that the operations of one licensee may interfere with that of another. Even if mobile operations are not now compatible with fixed operations within a licensee's service area, if adequate protections against inter-licensee interference are in place, a failure to authorize mobile use in this spectrum might delay implementation of a dual (mobile and fixed) operation when it does become feasible. Accordingly, the Commission agrees that 39 GHz licensees should have the flexibility to provide mobile services.

14. The Commission recognizes that inter-licensee interference issues are magnified under this approach. For example, a mobile unit operating in a fixed microwave environment on the same frequency calls for a different interference analysis and a more difficult resolution than the operation of two or more fixed microwave systems on the identical frequency in the same vicinity. In addition, the Department of Defense has stated that it has plans to implement satellite downlinks at 39.5–40.5 GHz in the future. NASA has also identified 39.5–40.0 GHz as a possible space research band to accommodate future earth-to-space wideband data requirements. Such plans, however, should not affect the continued development of the 39 GHz band for non-Government use. The Commission believes that it is likely that military satellite systems will be able to share with non-Government terrestrial and/or fixed satellite systems, provided that the Government receiving Earth stations are limited in number. The Commission intends to address these interference issues in a future, separate proceeding that will focus on developing inter-licensee and inter-service standards and criteria. Until these standards and criteria are adopted the Commission will not permit mobile operations in the 39 GHz band.

iii. The Balanced Budget Act Requirements for Flexible Use

15. The Balanced Budget Act authorizes the Commission to allocate spectrum so as to provide flexible use, if such use is consistent with international agreements to which the United States is a party and the Commission finds that: (1) Such an allocation would be in the public interest; (2) such use would not deter investment in communications services and systems, or technical development; and (3) such use would not result in harmful interference among users. In the NPRM and Order, the Commission sought comment on whether it should allow point-to-multipoint and mobile operations in addition to the traditional point-to-point services authorized in the 39 GHz band. As discussed *supra*, the Commission finds that the flexible use approach adopted herein is consistent with the new statute. Accordingly, the Commission will permit point-to-point, point-to-multipoint and mobile operations on the 39 GHz band. However, as explained *supra*, the Commission will defer mobile use until a future rulemaking proceeding can establish interference criteria. Accordingly, the Commission finds, as required by Section 303(y) of the Communications Act, as amended by the Balanced Budget Act, that no harmful interference will be caused by allowing both point-to-point and point-to-multipoint operations in the 39 GHz band. The Commission concludes further, based on the above-mentioned comments in the record, that point-to-multipoint use will not deter investment in communications services and systems, or in technology development. To the contrary, permitting point-to-multipoint use will stimulate creative technology development and facilitate investment therein. It is in the public interest to afford 39 GHz licensees flexibility in the design of their systems to respond readily to consumer demand for their services, thus allowing the marketplace to dictate the best uses for this band. Accordingly, the Commission finds that the requirements of Section 303(y) of the Communications Act, as amended, are fulfilled to justify point-to-multipoint use of the 39 GHz band as part of a flexible use approach. While at this time, the Commission is not determining the specific provisions for interference protection with regard to mobile use, it will adopt such requirements before permitting mobile operations in this band.

C. Channeling Plan

16. The existing 39 GHz channeling plan consists of fourteen paired 50 MHz channel blocks, with a spacing of 700 MHz between the transmit and receive frequencies. Within this framework, 39 GHz licensees have the flexibility to subdivide their channels in the manner they deem most appropriate to meet service demands. The Commission will retain its current channel plan. The Commission concludes that adopting a standard subchannelization plan at this early stage in the development of the 39 GHz service would potentially hamper licensees' efforts to meet their customer demands and could unnecessarily impose technical and economic costs on equipment users and limit the range of services potentially available. Moreover, given the short propagation transmission characteristics at these frequencies, lack of a subchannelization plan is not likely to cause any significant coordination problems in the 39 GHz band. Furthermore, because the Commission anticipates that one of the uses for the 39 GHz band is provision of CMRS infrastructure, it is concerned that adoption of a subchannelization plan may frustrate such use if it is inconsistent with the channeling plan for particular CMRS providers. Thus, the Commission believes that the existing approach that allows 39 GHz licensees to freely subdivide their channel blocks will not only avoid this unintended result but also facilitate the most flexible and efficient use of 39 GHz spectrum. As the Commission observed in the NPRM and Order, however, the Commission's decision not to adopt a standard subchannelization plan does not preclude the industry from developing its own voluntary standards in this area.

D. Licensing Rules

i. Eligibility

17. In addressing the eligibility issue, the Commission inquires whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm. This approach results in reliance on

competitive market forces to guide license assignment absent a compelling showing that regulatory intervention to exclude potential participants is necessary. Such an approach is appropriate here because it best comports with the Commission's statutory guidance. When granting the Commission authority in Section 309(j)(3) to auction spectrum for the licensing of wireless services, Congress acknowledged the Commission's authority ''to [specify] eligibility and other characteristics of such licenses.'' However, Congress specifically directed that the Commission exercise that authority so as to ''promot[e] * * * economic opportunity and competition.'' Congress also emphasized this pro-competitive policy in Section 257, where it articulated a ''national policy'' in favor of ''vigorous economic competition'' and the elimination of barriers to market entry by a new generation of telecommunications providers. This approach is also consistent with the Commission's analysis in Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5–29.5 GHz Frequency Band, To Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules, CC Docket No. 92–297, Suite 12 Group Petition for Pioneer Preference, PP–22, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 62 FR 16514 (April 7, 1997), adopting subpart L of part 101 of the Commission's Rules, 47 CFR 101.1001–1112; appeal pending sub nom. *Melcher* v. *FCC,* Case Nos. 93–110, et al. (D.C. Cir., filed Feb. 8, 1993); Order on Reconsideration, 62 FR 28373 (May 23, 1997). Finally, implementation of this approach is consistent with the court's treatment of eligibility issues in *Cincinnati Bell Tel. Co.* v. *FCC,* 69 F.3d 752 (6th Cir. 1995), at 760. In that decision, the Court looked to statistical data and general economic theory as support for predictive judgments by the Commission such as a finding that eligibility restrictions are required.

18. In the case of the 39 GHz band, the Commission determines that it is unlikely that substantial anticompetitive effects would result from LEC eligibility for two primary reasons. First, increased LEC provision of services other than those provided in local exchange markets, such as point-to-point backhaul and backbone transmission, will not diminish the generally competitive environment in which those services are now available. Second, even presuming that 39 GHz licenses will enable effective provision of services that can compete with local exchange service, such as wireless local loop, incumbent LECs should have little or no incentive to acquire those licenses with the anticompetitive intent of foreclosing entry by other firms and preserving market power. An incumbent strategy of preserving expected future profits by buying 39 GHz licenses cannot succeed because there are numerous other sources of actual and potential competition. As discussed *supra,* there are many non-LEC license holders in the 39 GHz band currently, and these licensees will be able to provide services that compete with wireline local exchange. In addition, the Commission's overall 36–51 GHz band plan contemplates making available considerable additional spectrum, including substantial unencumbered spectrum, for flexible terrestrial use at frequencies close to those covered by this Order. These future licenses should enable provision of whatever competitive services can be provided with the 39 GHz licenses. Further, entry by other wireless licensees is possible as well, such as CMRS firms now authorized to provide fixed services. Moreover, the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996), has set the stage for new facilities-based, wireline entrants such as interexchange carriers and competitive LECs, and non-facilities-based wireline entrants utilizing the new local competition provisions. Finally, the Commission has now provided for one additional potential competitive option in every region of the country in the form of the 1150 MHz LMDS licensee. The Commission has imposed an eligibility restriction preventing in-region LECs (and cable television companies) from acquiring these large LMDS licenses for three years, guaranteeing that each license will be acquired by a firm new to provision of local exchange in the service area. Therefore, these licensees also constitute potential competition for incumbent LECs providing local exchange services. Given all these competitive possibilities, it is implausible that incumbent LECs would pursue a strategy of buying 39 GHz licenses in the hope of foreclosing or delaying competition, and implausible that they would succeed if that strategy were attempted. Therefore, the Commission finds that LEC eligibility for these licenses poses no likelihood of substantial competitive harm.

19. Note that several factors, taken together, explain the distinction between the Commission's resolution of the eligibility issue here and in the case of the 1150 MHz LMDS licenses. The 1150 MHz LMDS license blocks are unusually large, making possible the provision of voice, video, data, or some combination of these services. With the possibility of providing voice cheaply as part of a set of services, the 1150 MHz LMDS license is a particularly attractive competitive option, and incumbents are particularly likely to attempt acquisition in order to prevent entry by new competitors using the LMDS license. In addition, with only one large LMDS license available per geographic area, anticompetitive preemption is quite feasible and thus the risk of such acquisition is increased. Moreover, the 39 GHz licenses being made available within the near future (*i.e.,* within a similar time frame as the LMDS spectrum) are encumbered, while LMDS licenses are largely unencumbered. Thus, 39 GHz licenses are less likely to be acquired by incumbent LECs for anticompetitive motives. Most importantly, as noted above, given the fact that the Commission has now provided for an additional competitive option by imposing the 1150 MHz LMDS eligibility restriction, the competitive circumstances it faces in this proceeding differ from those it faced in the LMDS proceeding. The Commission's eligibility analysis and conclusion here, in fact, are consistent with the Commission's treatment of eligibility for the small, 150 MHz, LMDS licenses.

20. Because the Commission sees no likely and substantial competitive harm flowing from LEC eligibility, it rejects the argument that LECs should be required to certify compliance with the ''Competitive Checklist'' as a precondition to participation in the 39 GHz auction. The Commission also notes as a general matter that LEC eligibility can be expected to yield efficiency benefits if there are complementarities between the ultimate use(s) of 39 GHz spectrum and the existing LEC services when offered in the same service area. For example, LECs might be able to achieve savings not available to new entrants by taking advantage of their current infrastructure, and imposition of restrictions would prevent realization of such savings. Restrictions might also prevent incumbent LECs from experimenting with certain technology and market combinations, and preclude or delay

desirable entry by incumbents into new markets.

ii. License Term

21. Under the Commission's previous rules, all common carrier 39 GHz licensees who were licensed before August 1, 1996 (*i.e.*, those licensed previously under part 21 of the Commission's Rules) were subject to a fixed license term ending February 1, 2001, regardless of the grant date of their individual licenses. Private carrier 39 GHz licensees authorized before August 1, 1996 (*i.e.*, those licensed previously under part 94 of the Commission's Rules) received a five-year license which would run from the date of license grant. However, both private and common carrier licenses granted on or after August 1, 1996, the effective date of the Part 101 Report and Order, have a license term not to exceed ten years. In addition, neither the former fixed microwave rules in Parts 21 and 94, nor the current ones in the new part 101, expressly provide for a renewal expectancy for common carrier or private carrier 39 GHz licensees.

22. The Commission declines to increase the term to ten years for incumbents who have received a shorter period under the rules that predated those adopted in the Part 101 Report and Order. When it adopted the part 101 rules, the Commission decided to conform the license terms of common carrier and private carrier 39 GHz licensees on a going forward basis. The Commission did not, therefore, alter the conditions under which incumbent licensees had taken their licenses, and it left in place a bifurcated approach toward renewal that would exist until the incumbents' current licensing cycle runs its course. The Commission is unpersuaded that this approach, adopted only a year ago, should be altered.

iii. Performance Requirements: Renewal and Build-out

23. The Commission noted in the NPRM and Order that both cellular and PCS licensees receive a renewal expectancy, and it proposed adopting a similar standard in this proceeding. Commenters support adopting a renewal expectancy for the 39 GHz service for similar reasons, as they recognize the benefits that such a presumption offers.

24. Incumbent 39 GHz licensees are currently subject to the build-out requirements of part 101 of the Commission's Rules, which require that at least one link be constructed in a licensee's geographic service area within eighteen months of the date of license grant. In the NPRM and Order, the Commission proposed new build-out requirements for incumbent 39 GHz licensees in order to ensure that the spectrum was being used to provide service to the public. Because of the Commission's concern that such licenses be used to provide service to the public, the Commission solicited comment on its proposal to allow incumbent 39 GHz licensees to retain their licenses only by meeting specific construction and loading requirements. The Commission suggested three basic construction build-out options, each of which depended upon a specific number of fixed stations to be built within the licensees' geographic service area. The build-out options were each intended to ensure a minimum level of service. While the proposals represented a significant departure from the current build-out rules applicable to these licensees, in the NPRM and Order the Commission stated that the purpose of these proposed measures was to minimize speculation without harming existing 39 GHz licensees who are responsibly developing the spectrum they have been assigned.

25. The Commission also requested comment on build-out requirements for new licensees authorized pursuant to the competitive bidding rules promulgated herein. In the NPRM and Order, the Commission observed that the Communications Act requires that any regulations implementing a competitive bidding system include performance requirements—such as appropriate deadlines and penalties for performance failures—to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees, and to promote investment in and rapid deployment of new technologies and services. The build-out requirements that apply to other fixed, microwave services licensed on a link-by-link basis, as well as those requirements that apply to mobile services, did not appear appropriate for a fixed, geographically licensed service like 39 GHz. Accordingly, the Commission asked for comment on what other methods it might employ to ensure that licensees are using their spectrum, servicing rural areas, and enabling the provision of new services to the public. The Commission suggested that these goals might be accomplished if it required licensees to demonstrate substantial service in their service areas. As the Commission noted in the NPRM and Order, the use of a substantial service standard has precedent in the Commission's Rules.

26. The performance rules the Commission is adopting for the 39 GHz band require each licensee to prove substantial service in order to achieve license renewal. The Commission arrives at this approach based on two factors. First, the approach satisfies the dictates of Section 309(j)(4)(B) of the Communications Act, which requires the Commission to adopt effective safeguards and performance requirements for licensees in connection with any competitive bidding system. The Commission believes that the requirements it establishes herein will fulfill this obligation, because a license will be assigned in the first instance through competitive bidding, with the result that it will be assigned efficiently to an entity that has shown, by its willingness to pay market value, its willingness to put the license to its best use.

27. Second, the approach the Commission is taking with regard to performance rules is also based on the record in this proceeding, which strongly supports giving 39 GHz licensees a significant degree of flexibility in meeting their performance requirement. As described above, the types of service available from 39 GHz providers is tremendously varied, and the service promises to develop in ways the Commission cannot predict at this time. Thus, an inflexible performance requirement might impair innovation and unnecessarily limit the types of service offerings 39 GHz licensees can provide. Permitting licensees to demonstrate that they are meeting the goals of a performance requirement with a showing tailored to their particular type of operation avoids this pitfall. Moreover, the Commission's examples of presumed substantial service, based on a specific number of links per population standard, provides licensees with a degree of certainty regarding their license requirements. Accordingly, the Commission believes that the performance requirements it establish herein will permit flexibility in system design and market development, yet provide a clear and expeditious accounting of spectrum use by licensees to ensure that service is indeed being provided to the public.

28. The Commission declines to adopt any of the build-out proposals it made for incumbent 39 GHz licensees in the NPRM and Order. The first option would have required licensees to meet a specific build-out benchmark. The Commission has considered a number of possibilities for such a benchmark, and it has rejected those that appear infeasible. The Commission's principal proposal fell into this category. The Commission had proposed to require any licensee to construct and put in operation at least four links per 100

square kilometers of their service area within 18 months of adoption of a Report and Order in this proceeding. The Commission is persuaded by several commenters' arguments that such a build-out requirement would be unduly restrictive and burdensome, thus unnecessarily limiting licensees' service options. For the same reasons, the Commission rejects a variant of its principal proposal, which would have combined the alternatives discussed below with an 18-month requirement to construct a certain number of links per 100 kilometers.

29. The other two alternatives the Commission had proposed for providing licensees with specific build-out benchmarks are also problematic. One alternative provided for a specific number of links, increasing over time, per geographic area served by each licensee. This alternative does not adequately take into account the differences among licensees. Under this requirement, a licensee in a sparsely populated BTA would have to build an operation that could provide the same level of service as a licensee of a metropolitan BTA. Such an approach would result in either an overly burdensome requirement for the licensee of the smaller market or a very lenient and almost meaningless requirement for the licensee of the metropolitan BTA. Moreover, since market size is a reasonable proxy for gauging the appropriate comparative levels of spectrum use, the Commission agrees with the consensus of the commenters that any build-out standard should therefore be based on market population or population density. This approach is, in fact, an underpinning of standards that have been adopted for CMRS services such as PCS and SMR.

30. The second alternative would have required licensees to construct a specific number of link installations based on the market's population. In the case of 39 GHz, however, the services to be offered generally will be customized for each subscriber, and, for the most part, each subscriber will have equipment dedicated to its location. Moreover, 39 GHz licensees are not likely to install equipment until they receive an order. The Commission further notes that some commenters argue that adoption of a concrete standard would discourage growth, stymie new development, and deter investment in the 39 GHz arena. Accordingly, the Commission is concerned that a requirement for a fixed number of links may interfere with the market decisions of a particular licensee and its customers.

31. The Commission concludes that a showing of substantial service, the approach it proposed for new 39 GHz licensees, should be applied to both incumbent and new licensees in the band. This approach will permit flexibility in system design and market development, while ensuring that service is being provided to the public. Although a finding of substantial service will depend upon the particular type of service offered by the licensee, one example of a substantial service showing for a traditional point-to-point licensee might consist of four links per million population within a service area. This revised performance standard should ensure that meaningful service will be provided without unduly restricting service offerings.

32. One of the principal problems that commenters identified with the Commission's build-out proposals was that they required too much too soon. The Commission recognizes that licensees must be given a reasonable amount of time to meet a performance requirement. Parties, particularly incumbent licensees, also argued that different build-out standards were unfair and would place an unreasonable burden on their ability to respond to market demands. Accordingly, the Commission has decided that in order to impose the least regulatory burden on licensees as possible, but to remain consistent with the Commission's statutory responsibilities, it will combine the showing traditionally required for build-out and the showing required to acquire a renewal expectancy into one showing at the time of renewal. The Commission believes this will give licensees a sufficient opportunity to construct their systems. The Commission believes that applying a similar performance requirement to all licensees at the license renewal point will help establish a level playing field without compromising the goals of ensuring efficient spectrum use and expeditious provision of service to the public.

33. The Commission recognizes that existing licensees who obtained their licenses before August 1, 1996, will receive a somewhat shorter period from the date of this decision to meet the construction threshold (*i.e.*, about four years). Extending the build-out deadline past renewal, however, would not be prudent nor would it appear to be consistent with the objectives of section 309(j) of the Communications Act. Moreover, these incumbents already have had at least a year, and in some cases more than two years, in which to set in motion their business plans. Thus, the Commission does not believe this approach will adversely affect incumbent 39 GHz licensees.

34. The Commission concurs with those commenters who advocate adopting a renewal expectancy for all licensees in the 39 GHz band. As with cellular and broadband PCS licensees, affording 39 GHz providers the opportunity to earn a renewal expectancy will facilitate investment for their industry, provide stability over the long run, and better serve the public by reducing the possibility that proven operators will be replaced with less effective licensees. The Commission is not limiting this opportunity to newly licensed 39 GHz providers. The build-out/renewal requirements established herein will, if met, serve to give the incumbent licensee a renewal expectancy as well.

iv. Spectrum Aggregation Limit

35. In the NPRM and Order, the Commission sought general comment on whether there should be a limit on the aggregation of 39 GHz channels within a single BTA. The Commission also requested comment on whether the 39 GHz service represents a discrete market. In the event that the Commission concluded that this service did constitute a discrete market, it indicated that a spectrum aggregation limit might be advisable to ensure that there would be an adequate number of licenses available to meet the needs of broadband PCS licensees and other competitors in the wireless marketplace.

36. The Commission agrees with those commenters who oppose a 39 GHz spectrum aggregation limit. The record strongly supports the conclusion that 39 GHz licensees will participate in a number of broad markets, consisting of a host of short-range fixed communications provided by many operators who employ a range of different, but substitutable, technologies (both radio and wire). Therefore, the Commission is not concerned with guaranteeing a particular number of 39 GHz competitors or with creating competition within the 39 GHz band. Moreover, as the Commission noted above, there is no evidence that the 1400 megahertz of spectrum in the 39 GHz band is particularly important for, or unusually suited for, the creation of competition in two markets where market power still exists—local telecommunications services and multi-channel video program delivery. Therefore, an aggregation limit is not needed in order to foster competition in these two markets. Indeed, a 39 GHz spectrum aggregation limit that was applicable to 39 GHz licensees might

limit the ability of a licensee to bring efficient competition to these markets.

37. Although the Commission believes that some of the 39 GHz spectrum will be used to satisfy CMRS and private mobile radio infrastructure needs, it is persuaded by the commenters that a great portion of this spectrum likely will be used to provide other wireless services, *e.g.*, local area network (''LAN'')-to-LAN, local access for long distance providers, wireless augmentations to CAPs' networks, and other high capacity data transmission networks. This is evidenced by current 39 GHz operations, which are not supporting CMRS communications infrastructure but generally tend to be local private line and local bypass services. Since this arena is already being served by multiple providers using a variety of technologies, it is clear that disaggregated ownership of 39 GHz spectrum is not necessary for the competitive provision of those services.

38. The Commission also notes that even the current users of the 39 GHz band are still in the early stages of developing their services, and that the particular uses of this spectrum are still being defined by the marketplace. As indicated above, 39 GHz spectrum can be used for almost any fixed, short-range communication—the internal parts of almost any communications system (mobile or fixed)—or the ''last mile'' of any fixed system, whether for voice, data, video, or more than one of the foregoing. At this time, the Commission believes that it would be inappropriate for us to view the output of 39 GHz spectrum as falling into any one of these categories or to find that some limit on spectrum aggregation in order to foster competition in that category is necessary. Accordingly, the Commission does not believe that it is appropriate to restrict the amount of 39 GHz spectrum that may be licensed to any one service or entity.

39. Moreover, the Commission concludes that there may be benefits to the public in terms of efficiencies and types of services provided if it permits aggregation of 39 GHz spectrum. For example, spectrum aggregation would allow a licensee to expand its operation and thereby lower the per unit cost of equipment and its per capita cost of providing service to subscribers. Furthermore, a 39 GHz licensee with substantial spectrum can better compete with established service providers who have large transmission capacity. In addition, the Commission concludes that it is not likely that aggregation of 39 GHz spectrum by a single entity would lead to undue market power. The Commission notes that other service providers, such as LECs and CAPs, have some significant competitive advantages over a competitor using only 39 GHz spectrum, such as an established customer base and transmission facilities that carry much more traffic than would be possible by a 39 GHz-based facility using only, for example, 700 MHz of spectrum. In addition, other service providers are not precluded from adding fiber or radio transmission facilities to their existing networks. Moreover, the Commission has proposed to make available additional spectrum enabling more parties to compete in many of the types of services proposed by potential 39 GHz service providers, and it plans to consider these proceedings in connection with the Commission's 36–51 GHz band plan proceeding. Therefore, the Commission believes that even if a single licensee controls a significant part of the 39 GHz band in a single BTA, it could not control service prices or limit competition, given the number of providers of similar or substitutable services and the variety of transmission media at their disposal.

40. The Commission also does not believe that a spectrum aggregation limit is warranted to ensure that there is adequate support spectrum available for broadband PCS, cellular radio, and other commercial and private mobile radio operations. While the use of the 39 GHz band may help meet these needs, such backhaul and backbone support can also be provided by using wire-based technologies and over-the-air spectrum outside the 39 GHz band (*e.g.*, at 6, 11, 18 and 23 GHz). Given this availability of substitutable spectrum for backhaul and backbone support, coupled with the aforementioned competition that exists to 39 GHz providers of alternative types of services, the Commission finds that imposing a spectrum aggregation limit for the 39 GHz band would be contrary to the public interest.

v. Technical Rules

a. *Frequency Tolerance and Efficiency Standard.*

41. The Commission has determined that a frequency tolerance standard is unnecessary. The Commission's basis for this view stems from its desire to provide 39 GHz licensees flexibility in the operation of their facilities and to avoid imposing unnecessary regulations. In addition, the Commission believes such a standard could inhibit technological advances, for equipment performance is likely to be influenced by customer demand. For those that might be concerned that elimination of this standard may lead to inter-system interference, the Commission points to its existing out of band emission requirements (emission mask) contained in § 101.111 of the rules. That rule requires frequencies removed in various percentages from the center frequency to be attenuated below the mean power of the transmitter. This means that the frequencies at the outer edges of an assigned 50 MHz channel or at the edge of an aggregated group of 50 MHz channels power levels will be significantly reduced such that interference to an adjacent channel licensee is unlikely. Thus, the Commission believes that strict adherence to § 101.111 will be as effective in controlling inter-system interference as the imposition of a frequency tolerance standard. In addition, concerns for inter-system interference should be further eased, as the Commission is requiring neighboring and adjacent channel licensees to engage in frequency coordination before implementation of their planned operations.

b. Antenna Requirements.

42. There is evidence in the record that the Commission's proposal to require 39 GHz licensees to employ only Category A antennas is too restrictive because parties are contemplating a variety of system configurations that would require different types of antennas, *e.g.*, sectorized or wide beam units, characteristics of which would be incompatible with the standards of a Category A antenna. These models represent a more cost-effective and technically suitable alternative to traditional narrowbeam Category A antennas when deployed in a point-to-multipoint configuration. As the deployment of 39 GHz facilities increases, the Commission expects other system configurations to be developed in which narrowbeam antennas may not be the optimal solution. The Commission concludes that the need to provide 39 GHz licensees the technical flexibility to meet service demands outweighs any benefits that would ensue by adopting the requirement. Therefore, the Commission declines to require licensees in the 39 GHz band to use Category A antennas initially. The Commission concludes that 39 GHz licensees should be given the flexibility to employ antennas other than Category A types, provided they do not cause interference problems. Should the use of an antenna other than a Category A antenna become the source of an interference problem, however, the Commission will require that the licensee immediately resolve such interference by replacing the antenna

with a Category A model or one with better performance characteristics.

c. Frequency Coordination and Power Flux Density (''PFD'') Limit.

43. The Commission is persuaded by the record that adoption of a PFD limit or field strength limit now would not further the Commission's goal of facilitating the growth and development of the 39 GHz spectrum. In this connection, the Commission notes that there is a lack of consensus regarding the parameters necessary to establish a reasonable and practical PFD or field strength limit. As a result, the Commission is concerned that establishing a service area boundary PFD or field strength limit without such information may stifle the development of advanced 39 GHz technology. Thus, the Commission declines to adopt such a standard at this time, and consequently, it need not reevaluate the current EIRP at this time. The Commission concludes that it is in the public interest to continue to use the frequency coordination procedures outlined in § 101.103(d) of the Commission's Rules. The Commission describes these procedures, *infra,* as modified to implement certain improvements supported by the record of this proceeding. Despite the fact that licensees will not be able to rely on PFD or field strength limits to avoid the formal coordination process, the Commission believes that its modified coordination procedures will provide licensees substantial flexibility in system design while ensuring that inter-system interference will be kept to a minimum. The Commission's experience with other services employing frequency coordination procedures shows that those services have been successfully implemented with little delay and rarely result in unresolved frequency interference cases.

44. Under the Commission's frequency coordination procedures, 39 GHz licensees will be subject to the requirements of § 101.103(d) of the Commission's Rules, with certain modifications. As a result, they must provide values for the appropriate parameters listed in that subsection to each neighboring BTA licensee authorized to use adjacent and co-channel frequencies. Likewise, they must provide the same information to each potentially-affected, adjacent-channel licensee in the same BTA. Coordinating parties also must supply technical information related to their subchannelization plan and system geometry. Based on the propagation characteristics of this spectrum, coordination between neighboring systems need only encompass operations located within 16 kilometers of BTA boundaries. Currently, § 101.103(d) of the Commission's Rules gives each party that receives a coordination notification 30 days in which to respond. The record in this proceeding indicates that 30 days is an inappropriate time frame for operations in the 39 GHz band because licensees often offer service that requires much shorter installation deadlines. In order to facilitate such rapid service installation schedules, the Commission will require that recipients of coordination notifications respond within 10 days. Each licensee must complete this coordination process prior to initiating service within its service area. Finally, participating parties should resolve any problems that develop during this process. Only unresolved frequency conflicts should be reported to the Commission. In such cases the Commission will resolve the conflicts. The Commission believes that the coordination approach it is adopting does not preclude licensees from entering into private agreements that mitigate interference problems. These agreements may include an arrangement to conduct a one-time blanket coordination as opposed to coordinating each individual link as they are planned for activation, or arrangements for one party to compensate another financially for modifying its operation to accommodate new installations.

vi. Partitioning and Disaggregation

45. Partitioning is the assignment of all the spectrum within specific geographic portions of a licensee's service area. Disaggregation is the assignment of discrete portions or ''blocks'' of licensed spectrum to another entity. The Commission concludes that partitioning and disaggregation should be permitted in the 39 GHz band. The Commission further concludes that the option of partitioning should not be limited to rural telephone companies but should be made available to all entities eligible to be licensees in the 39 GHz band, including incumbent 39 GHz licensees. The Commission thus concurs with commenters who support partitioning, and notes that no parties opposed this proposal. The Commission believes that the availability of these options will enhance 39 GHz licensees' flexibility with respect to system design and service offerings. The Commission also believes that partitioning and disaggregation opportunities further the objectives of section 309(j) of the Communications Act by facilitating the development of niche markets and the arrival of new entrants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women. In addition, these tools will promote efficient use of 39 GHz spectrum.

46. As a result, 39 GHz licensees acquiring their licenses under the new rules established herein will be permitted to acquire partitioned and/or disaggregated licenses in either of two ways: (1) They may form bidding consortia to participate in auctions, and then partition or disaggregate the licenses won among consortia participants after grant; or (2) they may acquire partitioned or disaggregated 39 GHz licenses from other licensees through private negotiation and agreement either before or after the auction. A licensee planning to partition or disaggregate its license must first be granted the license, and the licensee and partitionee and/or disaggregatee will be required to file an assignment application. The Commission will require that a licensee disaggregate by frequency pairs. This requirement is necessary for administrative purposes: the database necessary to track authorizations could otherwise become too cumbersome and complex and processing could become delayed or prone to error.

47. Overall, the Commission believes that partitioning and disaggregation will promote competition in the 39 GHz service and expedite the delivery of service to the public, particularly in rural areas. Moreover, partitioning and disaggregation will help to eliminate market entry barriers pursuant to section 257 of the Communications Act by creating smaller, less capital intensive service areas that may be more accessible to small entities. The Commission considers partitioning and disaggregation effectively to be types of assignments, which will, therefore, require prior approval by the Commission. In authorizing partitioning and disaggregation, the Commission will follow existing assignment procedures.

48. The Commission will require the entity acquiring a license by partitioning or disaggregation to satisfy the same construction requirements as the initial licensee, regardless of when its license was acquired. Should a licensee fail to meet the construction requirements, the license will cancel automatically. The cancelled license will, if it was partitioned from a rectangular service area, revert to the BTA licensee for that channel (unless the forfeiting entity is the BTA licensee for that channel). If the forfeited license was partitioned from a BTA, the license will be auctioned. In addition, parties must comply with the Commission's current technical rules

with respect to service area boundary limits and protections. Coordination and negotiation among licensees must be maintained and applied in licensing involving partitioned areas and disaggregated spectrum. Finally, under partitioning or spectrum disaggregation, an entity will be authorized to hold its license for the disaggregated spectrum or partitioned area for the remainder of the original license term. The Commission concludes that this approach is appropriate because the Commission should not bestow greater rights to a licensee receiving its authorization pursuant to partitioning or spectrum disaggregation than the Commission awarded under the terms of the original license grant.

vii. Regulatory Status

49. The Commission concludes that 39 GHz band licensees should be permitted to serve as a common carrier or as a private licensee. Further, those licensees who select common carrier regulatory status will be able to provide private service, and those licensees who select private service provider regulatory status may share the use of their facilities on a non-profit basis or may offer service on a for-profit, private carrier basis subject to § 101.135 of the Commission's Rules. Under this scenario, licensees will elect the status of the services they wish to offer and be governed by the rules applicable to their status. Although no commenters addressed this issue, the Commission believes this approach will promote economic efficiencies by reducing construction and operating costs associated with having to provide separate facilities. This result also is consistent with § 101.133(a) of the Commission's Rules.

E. Treatment of Incumbent 39 GHz Licensees

50. Incumbent 39 GHz licensees are those who have been licensed under the current fixed microwave rules in 47 CFR Part 101, or its predecessors, parts 21 (for common carriers) or 94 (for private carriers). Their service areas are self-defined and generally are restricted to point-to-point operations. Many of these licensees have participated as commenters in this proceeding, and include WinStar, ART, BizTel, Columbia, and a number of PCS licensees.

i. Reconciling Service Areas of 39 GHz Incumbents With BTA Service Areas of New Licensees

51. While the Commission has decided that BTAs are appropriate for the new licensing system in the 39 GHz band, it recognizes that many of the newly-licensed BTA service areas will be encumbered by incumbent 39 GHz band licensees. These incumbents are authorized in various locations throughout the country, and their rectangular service areas will occupy portions of BTAs or cross BTA boundaries. After careful consideration of the concerns expressed by various commenters, the Commission concludes that the following approaches are appropriate.

52. Where an incumbent licensee's rectangular service area occupies only a portion of a BTA, the licensee's channels will be available for application under the new competitive bidding rules, but the incumbent will retain the exclusive right to use those channels within its rectangular service area. The holder of the BTA authorization thus will be required to design its system to protect against harmful interference to the incumbent by complying with the Commission's interference protection standards. The Commission notes that should such an incumbent lose its authority to operate, the BTA license holder will be entitled to operate within the portion of the forfeited rectangular service areas located within its BTA, without being subject to competitive bidding. This approach best serves the public because it gives the service providers an incentive to make efficient use of available spectrum, and it ensures that any disruption of service will be remedied as quickly as possible.

53. Where an authorized incumbent licensee has a rectangular service area covering an entire BTA, the Commission will not make those channels available for ''overlay'' licensing in that BTA. Unlike the scenario described above, in this situation a BTA will not have areas that are currently unassigned. Since incumbents will be required to construct and operate pursuant to Commission Rules, the public should be assured of receiving service throughout the BTA without the need to license an alternative provider.

ii. Repacking

54. *Background.* In the NPRM and Order, the Commission asked for comment on whether incumbent facilities should be relicensed on their current frequency or whether incumbent links should be ''repacked'' into a different portion of the band than initially occupied. There was very little discussion by commenters on the issue of repacking. The Commission's general approach up to this point has been to refrain from repacking, if possible. The Commission finds that repacking the 39 GHz band would cause a significant disruption of incumbent 39 operations. As noted throughout this proceeding, the Commission does not intend to alter or restrict significantly the operations of incumbents. Moreover, the Commission believes that it can coordinate with the extant licenses of 39 GHz incumbents so that they will not impair the Commission's new licensing system using BTAs and 50-MHz channel blocks. Accordingly, the Commission does not believe that repacking is necessary under these circumstances.

iii. Disposition of Pending 39 GHz Band Applications

a. Background.

55. On November 13, 1995, the Wireless Telecommunications Bureau (''Bureau''), pursuant to delegated authority, adopted and released an Order (''Freeze Order''), 61 FR 8062 (March 1, 1996), announcing that the Commission would no longer accept for filing any new applications for 39 GHz licenses in the Common Carrier or Operational Fixed Point-to-Point Microwave Radio Services, pending Commission action on the TIA Petition. The Freeze Order was made effective upon its release.

56. The NPRM and Order, *supra*, extended the freeze, providing that pending applications would be processed only if (1) they were not mutually exclusive with other applications at the time of the Bureau's Freeze Order, and (2) the 60-day period for filing mutually exclusive applications had expired prior to November 13, 1995 (*i.e.*, the applications were ''ripe''). The NPRM and Order further provided that those applications that were mutually exclusive with others as of November 13, 1995, or within the 60-day period for filing competing applications on or after November 13, 1995, would be held in abeyance for processing and disposition. In addition, amendments to these frozen applications received on or after November 13, 1995, were also held in abeyance. Moreover, applications for modification of existing 39 GHz licenses (*e.g.*, applications to modify existing licenses for the purpose of changing the height of an antenna) filed on or after November 13, 1995, were held in abeyance, as well as amendments thereto that were filed on or after November 13, 1995. Finally, no new applications to modify existing licenses, or amendments to pending modification applications, were to be accepted for filing on or after December 15, 1995, unless they (1) did not involve any enlargement of any portion of the proposed area of operation, and (2) did

not change frequency blocks, other than to delete one or more.

57. On January 16, 1996, Commco filed a Petition for Reconsideration and an Emergency Request for Stay, asking the Commission to vacate that portion of the NPRM and Order imposing an interim freeze on the processing of mutually exclusive applications to establish new facilities in the 39 GHz band, including amendments thereto, pending as of November 13, 1995. BizTel, GHZ Equipment Company, Inc. (''GEC''), and TIA filed comments in support of the Stay Request. Additionally, on January 16, 1996, DCT Communications, Inc., filed a Petition for Partial Reconsideration, requesting that the Commission process (a) minor amendments, at least those that eliminate mutual exclusivity, and (b) as-yet uncontested applications for which the 60-day period for filing mutually exclusive applications had not expired prior to the November 13, 1995, Freeze Order.

58. In its Memorandum Opinion and Order, *supra,* the Commission reconsidered certain aspects of the Commission's processing freeze and decided to lift the processing freeze on amendments of right filed before December 15, 1995. Thus, all applications that were amended to resolve mutual exclusivity before that date were to be processed, provided they had completed their 60-day public notice period as of November 13, 1995. In addition, the Commission clarified that applications to modify existing 39 GHz licenses and amendments thereto were to be processed regardless of when filed, provided they neither enlarge the service area nor change the assigned frequency blocks (except to delete them). In all other respects, the Commission's decisions regarding the filing and processing of 39 GHz applications and amendments were unaffected by the reconsideration decision. A summary of other main points of the decision follows:

- The Commission decided to process those amendments of right filed on or after November 13, 1995, but before December 15, 1995.
- The Commission noted that all other amendments filed on or after November 13, 1995, would continue to be held in abeyance.
- The Commission affirmed its decision to continue to hold in abeyance all pending mutually exclusive applications, unless the mutual exclusivity was resolved by an amendment of right filed before December 15, 1995. Where the mutual exclusivity was resolved, the Commission expressly stated that it would process the application provided that the application was ''ripe'' as of November 13, 1995—*i.e.*, that it had been placed on public notice and completed the 60-day cut-off period for filing of competing applications as of November 13, 1995.
- The Commission affirmed its decision to hold in abeyance all applications that had not been placed on public notice or completed the 60-day cut-off period as of November 13, 1995.

b. Processing of Pending Applications.

59. In view of the goals of this proceeding, *e.g.*, to foster competition among different service providers, to promote maximum efficient use of the spectrum, and to provide efficient service to customers by improving the licensing procedure, the Commission concludes that what follows is the best approach for processing currently pending 39 GHz license applications that were affected by the November 13, 1995, Freeze Order and the December 15, 1995, freeze. The Commission has processed: (1) Those 39 GHz applications that were not mutually exclusive as of December 15, 1995, and that, as of November 13, 1995, had passed the 60-day cut-off period for filing competing applications, and (2) applications to modify existing licenses (''modification applications''), or amendments to modification applications, which do not enlarge the service area or change frequency blocks, except to delete them. For the reasons that follow, the Commission has decided to dismiss, without prejudice, all other applications that have remained subject to the freeze, *i.e.*, (1) applications that are mutually exclusive, (2) applications that were not yet on public notice, or for which the 60-day cut-off period had not been completed prior to November 13, 1995, and (3) modification applications or amendments thereto that do not meet the criteria set out *infra,* in paragraph 95. These applicants may reapply under the new geographic area licensing rules established in this proceeding.

i. Pending Mutually Exclusive 39 GHz Applications.

60. PCS and other CMRS licensees, equipment manufacturers, and the Telecommunications Industry Association (TIA) ask that the Commission process 39 GHz applications that are pending and mutually exclusive. GTE Service Corporation (GTE), however, urges us either to (1) dismiss the pending 39 GHz applications that the Commission is holding in abeyance and open a new application filing window for such frequencies and licensing areas under the new rules that the Commission adopts in this proceeding; or (2) retain those applications on file and permit other interested parties to file competing applications that will be processed pursuant to adopted competitive bidding procedures and corresponding rules for 39 GHz authorizations. Some commenters recommend a specific time frame for allowing 39 GHz license applicants to resolve mutual exclusivity, *i.e.*, between 60 days and six months after a Report and Order is issued in this proceeding. In its Comments filed on March 4, 1996, Bachow and Associates, Inc. (Bachow) asks that the Commission dismiss, without prejudice, any mutually exclusive applications that remain after the time for resolving mutual exclusivity passes.

61. Some commenters further ask that the Commission dismiss as defective any applications which did not limit themselves to only one specified 39 GHz channel as of November 13, 1995, or which otherwise failed to satisfy the Public Notice, Mimeo No. 44787 (released Sept. 16, 1994), that described the processing procedures and rules applicable to the 39 GHz band. Under this approach, any remaining applicants that are still subject to mutual exclusivity would be allowed to file amendments to reduce their proposed service area contours or otherwise enter into settlement agreements to resolve their conflicts.

62. The Commission has determined that the best approach for processing pending mutually exclusive applications is to dismiss them without prejudice, and to allow these applicants to submit new applications under the competitive bidding rules established in this proceeding. The Commission takes this action because it finds that this procedure will optimize the public interest by promoting fair and efficient licensing practices. As the Commission discusses below, (''Auctionability of the 39 GHz Band''), the use of a competitive bidding system for licensing the 39 GHz band constitutes the best method for choosing among mutually exclusive applicants. Competitive bidding allows spectrum to be acquired by the parties who value it most highly and increases the likelihood that innovative, competitive services will be offered to consumers. These benefits will be lost, in part, if the Commission were to process pending mutually exclusive applications under its old rules. Moreover, under such an approach, those pending mutually exclusive applications that cannot be accommodated by the availability of alternative frequencies would be subject to comparative hearing (either formal or informal). While these rules may be

useful in other bands to address the rare situation in which two point-to-point links cannot be coordinated to avoid interference, in the 39 GHz band, applicants seek to serve geographic areas rather than to provide service on a single point-to-point link basis. This, coupled with the exponential growth in demand for 39 GHz spectrum, results in a significant number of mutually exclusive applications, including ''daisy-chain'' situations, among entities seeking to acquire spectrum. Resolving these mutually exclusive applications through comparative hearings would be much slower and possibly more costly, both to the government and applicants, than competitive bidding.

63. The Commission also finds that those who believe that they should be afforded the opportunity to amend their pending applications to avoid mutual exclusivity had ample opportunity to file such amendments prior to the commencement of this rule making. The Commission is not convinced that parties who have not already entered such agreements will successfully accomplish such agreements now. Moreover, even if such agreements are possible, the parties will have the opportunity to accomplish similar results through the partitioning and disaggregation rules the Commission is adopting today. Similarly, parties may resolve existing conflicts by forming joint ventures or similar arrangements to apply for BTA licenses. If, however, the Commission permitted pending mutually exclusive applicants to resolve their conflicts outside the structure of the competitive bidding process, other entities would be foreclosed from an opportunity to apply for 39 GHz spectrum under the flexible rules the Commission adopts herein. This would have the result of limiting the pool of potential applicants to those who have already filed under the current, more restrictive rules, and may inhibit the development of new and innovative services in this spectrum. Accordingly, the Commission finds that existing applicants have a reasonable avenue of relief for their concerns in the procedures it adopts herein, and accordingly denies their requests.

ii. Applications Within the 60-day Public Notice Period on November 13, 1995.

64. Some petitioners and commenters argue that the Commission should process the ''unripe'' applications—those that had not passed the 60-day public notice period as of the date of the November 13, 1995, Freeze Order. According to DCT, for example, all applications that have been or should have been placed on public notice announcing their susceptibility to petitions to deny as required by section 309 of the Communications Act meet the processing requirements of the Communications Act. DCT contends that the disparate treatment of these applications and those the Commission have decided to process would only make sense if there were no vacant channel pairs available for a second applicant in the same service area. DCT and WinStar argue that under the rules, if there were a vacant channel pair, a second applicant would have to yield ultimately to the first-in-time applicant with respect to the frequencies specified by the first-in-time applicant.

65. In the Memorandum Opinion and Order, *supra,* the Commission held that unripe applications would continue to be held in abeyance because, until the Commission had completed its consideration of the record, the Commission was not in a position to state whether further applications may be filed, or how the applications presently held in abeyance would have been treated. Having concluded here that the 39 GHz band should be subject to significantly different rules than the ones used previously, the Commission believes that the most fair and reasonable approach with regard to pending unripe applications is to dismiss them and allow these applicants to reapply under the new rules set forth in this proceeding. Taking into account its conclusion that these new rules further the public interest, the Commission believes that applying the new 39 GHz rules to those applications that were still subject to the possibility of competing applications under the former rules adequately balances the expectations of applicants with the public need for a better system for licensing use of the 39 GHz band. The Commission further believes that it has crafted a fair approach because such applicants will be permitted to apply for spectrum under the new rules.

iii. Modification Applications.

66. In the NPRM and Order, the Commission stated that it would hold in abeyance modification applications, and any amendments thereto, that were filed on or after November 13, 1995, the date of the Freeze Order. The Commission stated that no new applications to modify existing licenses would be accepted after December 15, 1995, unless they did not involve any enlargement in any portion of the service area and did not change frequency blocks (unless to delete one).

67. In the Memorandum Opinion and Order, *supra,* the Commission clarified that any pending modification application or amendment thereto filed prior to November 13, 1995, was to be processed. Modification applications or amendments to such applications, filed between November 13 and December 15, 1995, which meet the criteria of § 101.59 of the Commission's Rules and which do not enlarge the applicant licensee's service area, were to be accepted for filing and processed. Any modification application, or amendment thereto, which meets the criteria of § 101.61 of the Commission's Rules were likewise to be accepted for filing and processed. All other modification applications and amendments thereto were to be held in abeyance.

68. For the same reasons that the Commission dismisses without prejudice the pending mutually exclusive and unripe applications as discussed *supra,* the Commission also dismisses without prejudice any modification application held in abeyance pursuant to the freeze. Such applications, if granted under the previous rules, would frustrate the goals underlying this proceeding by continuing the licensing scheme which the Commission is abandoning with this Report and Order. As discussed *supra,* the Commission must choose a point from which its new rules will apply, taking into account its conclusion that these new rules are in the best interest of the public for the development of new services in the 39 GHz band. The Commission believes that it is fair to dismiss major modification applications because such applicants will be permitted to apply for additional spectrum, without disadvantaging potential new entrants, under the new rules.

iv. Applications That Are Partially Mutually Exclusive.

69. There are seven applications that are partially mutually exclusive. That is, these applications request more than one frequency pair, some of which are mutually exclusive with frequencies requested in other applications and some of which are not mutually exclusive. Although the non-mutually exclusive portion of these applications was subject to processing under the Commission's December 15, 1995, NPRM and Order, the mutually exclusive portion of each of the applications was required to be held in abeyance. The divided status of these applications has presented a unique processing issue. The Commission's electronic process for addressing these applications does not permit partial grants because there is no capability for allowing an application to remain in pending status if final action has been taken on a portion of it. As a result, the Commission has not been able to process the non-mutually exclusive portion of these applications until it had

reached a decision regarding the disposition of pending mutually-exclusive applications in general. As the Commission has now made this determination, it will process these applications as follows. Specifically, it will process to completion that portion of each of these applications that is non-mutually exclusive with other applications. However, the Commission will dismiss the remainder of the application which cannot be granted due to mutual exclusivity, consistent with the Commission's order herein.

II. Decision—Competitive Bidding Issues

A. Auctionability of the 39 GHz Band

70. *Background.* In the NPRM and Order, 61 FR 2465 (January 26, 1996), the Commission proposed to use competitive bidding to select among mutually exclusive applications for initial licenses in the 39 GHz band. The Commission reconsidered its previous decision not to license intermediate links by competitive bidding and the various factors that influenced its decision. First, the Commission noted that point-to-point microwave channels used as part of end-to-end subscriber-based service offerings meet the ''principal use'' requirement of the Communications Act. Second, because BTAs are large areas, the Commission stated that defining service areas by BTAs likely will result in the filing of mutually exclusive applications. Third, the Commission noted that based upon experience with auctions in other services, an auction for intermediate links within a well-defined service area will neither significantly delay the provision of other services, such as PCS, to the public nor impose significant administrative costs on the applicants or the Commission. Fourth, the Commission noted that by placing licenses in the hands of those who value this spectrum most highly, competitive bidding will likely promote the development and rapid deployment of new technologies and ensure that new and innovative technologies are readily accessible to the American people. Finally, the Commission noted that some of the licensees in the 39 GHz band have offered to sell or lease their licenses and may never have intended to directly serve the public, but rather to hold their own auctions and thereby deprive the public of the aforementioned benefits.

71. *Discussion.* Upon consideration of the record in this proceeding, the Commission concludes that auctioning the 39 GHz band meets the new criteria set forth in § 309(j) of the Communications Act, as amended by the Balanced Budget Act of 1997 (''Budget Act''). During the pendency of this proceeding and after comments were received in this proceeding, Congress enacted the Budget Act which extended and expanded the Commission's auction authority. Many commenters support the award of unallocated spectrum through auctions for the 39 GHz band. Using the pre-Budget Act criteria for auctionability of spectrum, some commenters argued that the 39 GHz band did not meet such criteria because: (1) The band is being used for providing intermediate links and, therefore, is not principally being used to garner compensation from subscribers as required under the former ''principal use'' criterion of the Act; (2) an auction of the 39 GHz band does not promote the objectives contained in the Act; and (3) an auction of intermediate links could significantly delay the development and deployment of new products and services and impose significant costs on licensees and the Commission. As discussed below, as a result of the Budget Act provisions, the ''principal use'' criterion of 309(j)(2)(A) and ''promote the objectives'' criterion of 309(j)(2)(B) and 309(j)(3) of the Act no longer govern the auctionability of electromagnetic spectrum. Thus, the Commission does not find these arguments to be compelling reasons not to employ competitive bidding procedures for 39 GHz spectrum.

72. Under the Budget Act, the Commission's auction authority covers all mutually exclusive applications for initial licenses or construction permits, with three limited exceptions which are not applicable in this proceeding. The Budget Act replaced language in section 309(j)(2), formerly called ''Uses to Which Bidding May Apply,'' which stated the requirements for spectrum to be auctionable (i.e., a determination that the principle use of the spectrum will be on a subscription basis and that competitive bidding will promote the objectives stated in section 309(j)(3)) with a new paragraph that expands the Commission's auction authority. Under amended section 309(j) the Commission has the authority to auction the 39 GHz band.

73. DCT contends that using competitive bidding procedures for this band violates §§ 309(j)(1) and 309(j)(6)(E), because the Commission is required to use various means to avoid mutual exclusivity, including the use of engineering solutions, negotiate threshold qualifications and service regulations, and licensing proceedings, before turning to auctions. DCT argues that because the NPRM and Order finds that current point-to-point rules are structured to avoid mutual exclusivity through frequency coordination, changing the rules to license by BTAs is tantamount to adopting a licensing system designed to encourage mutual exclusivity. The Commission rejects DCT's contentions. The 39 GHz band has been the subject of significantly increased requests for large rectangular service areas and multiple channels. Frequency coordination techniques, suitable for the level of point-to-point spectrum demand existing prior to the existence of emerging technologies, are no longer adequate. The use of pre-defined geographic areas rather than the applicant-defined rectangular areas currently used as service areas furthers the Commission's public interest goals, as concluded above. As the Commission noted, *supra,* predetermined service areas will provide a more orderly structure for the licensing process and will foster efficient utilization of the 39 GHz spectrum in an expeditious manner. Indeed, the use of applicant-defined service areas can actually slow the delivery of services because the processing of each application requires extensive analysis and review by Commission staff.

74. Similarly, the Commission also rejects DCT's related contention that the proposed auction framework for the 39 GHz band—simultaneous multiple round bidding, the Milgrom-Wilson activity rule and the simultaneous stopping rule—encourages mutual exclusivity of applications. DCT further rejects the proposed rule that would have limited licensees to an interest in four channel blocks contending that the ''expansion of the number of channels which an applicant may receive from a *de facto* one channel to four channels also encourages mutual exclusivity.'' The competitive bidding rules proposed have been used successfully in previous auctions and are intended to provide flexibility to bidders to pursue different strategies for interrelated licenses. Finally, as noted *surpa,* the Commission has decided not to place any limit on the number of channels a licensee may hold. The Commission rejects the contention that this will encourage mutual exclusivity, but rather believes that this will best foster the creation and deployment of new services. As discussed below, various other auction provisions adopted here will address the speculative bidding concerns raised by DCT.

75. While the Commission believes that competitive bidding will place licenses in the hands of those who value them the most, various commenters propose other methods for licensing this

band. DCR, for example, proposes that the Commission use the alternative licensing proposal set forth in the NPRM and Order. TGI proposes tight usage requirements, *e.g.,* existing permittees would have six months from completion of rule making to construct and commence operation of their systems. Bachow proposes that the Commission adopt a going-forward licensing approach that provides for, among other things, applicant-defined service areas in contrast to geographic licensing; public notice and thirty-day cut-off windows; exhaustion of coordination efforts prior to any auction; and reasonable build-out requirements. Finally, Ameritech and others state that after the Commission has finished processing 39 GHz amendments, there likely will be little or no desirable spectrum for any subsequent overlay auction of the 39 GHz channels. These commenters recommend that, in lieu of auctions, the Commission make the 39 GHz band available for the licensing of point-to-point paths. While the Commission notes these various proposals, the Commission concludes that the Budget Act's amendments to section 309(j) of the Act directs it to auction the 39 GHz band.

76. The Commission also notes that under the Budget Act amendments, it is required to provide adequate time before the issuance of bidding rules to permit notice and comment, and after the issuance of bidding rules to ensure adequate time for interested parties to assess the market and develop their strategies or approaches as required under section 309(j)(3)(E). The Commission believes it has satisfied the first requirement by seeking comment in the NPRM and Order. As to the second requirement, the Bureau recently released a Public Notice announcing general time frames for upcoming auctions. The Commission anticipates that the Bureau will routinely release similar public notices in the future. The Commission believes that the release of such public notices combined with the release of a Public Notice announcing the 39 GHz auction should ensure that interested parties have adequate time to assess the market and develop their strategies.

B. Competitive Bidding Design and Procedures

i. Competitive Bidding Design

77. *Background.* In the NPRM and Order, the Commission tentatively concluded that simultaneous multiple round auctions are appropriate for this band. The Commission noted that compared with other bidding mechanisms, simultaneous multiple round bidding will generate the most information about license values during the course of the auction and provide bidders with the most flexibility to pursue back-up strategies.

78. *Discussion.* Based on the record in this proceeding and the Commission's successful experience conducting simultaneous multiple round auctions for other services, the Commission believes a simultaneous multiple round auction design is the preferable competitive bidding design for the 39 GHz band. The commenters generally support the proposal to use simultaneous multiple round auctions for selecting among mutually exclusive applicants. In addition, the Commission believes that the value of these licenses will be significantly interdependent because of the desirability of aggregation across geographic regions. Under these circumstances, simultaneous multiple round bidding will generate more information about license values during the course of the auction and provide bidders with more flexibility to pursue back-up strategies, than if the licenses were auctioned separately.

79. DCT, on the other hand, argues that simultaneous multiple round auctions give applicants only one opportunity to file for any or all channels and that this approach creates an urgency to file for channels that the applicant would not otherwise seek, thereby fostering unnecessary creation of mutual exclusivity. DCT's argument misses several points. As an initial matter, the Commission is not proposing to auction all of the channels at one time but rather in a series of simultaneous multiple round auctions in which three channels would be placed up for bid in each auction. See *infra.* Thus, applicants will have more than one opportunity to file for channels. Moreover, the nature of this auction design provides bidders with flexibility to pursue different strategies for interrelated licenses. Specifically, it allows a bidder to pursue substitute licenses in the event it fails to obtain its first choices. In addition, the Commission believes that the upfront payment requirement and its withdrawal rules provide a sufficient deterrent against applicants seeking licenses that they do not want or intend to use. Notwithstanding its conclusion regarding the use of simultaneous multiple round bidding, the Commission retains the discretion to use a different methodology if that proves to be more administratively efficient.

ii. Applicability of Part 1, Standardized Auction Rules

80. In the Competitive Bidding Second Report and Order, 59 FR 22980 (May 4, 1994) as modified by the Competitive Bidding Second Memorandum Opinion and Order, 59 FR 44272 (August 26, 1994), the Commission established general competitive bidding rules for all auctionable services, but also stated that such rules may be modified on a service-specific basis. These general competitive bidding rules are contained in part 1 of the Commission's Rules. In the recent Order, Memorandum Opinion and Order and Notice of Proposed Rule Making in WT Docket No. 97–82, 62 FR 13540 (March 21, 1997), the Commission amended some of the part 1 provisions, and proposed further amendments to the part 1 rules to streamline its auction procedures. Accordingly, for the 39 GHz band, the Commission will follow the competitive bidding rules contained in, or ultimately established for, Subpart Q of part 1 of the Commission's Rules, as amended by the part 1 proceedings and related decisions, unless specifically indicated otherwise below.

C. Bidding Issues

i. Grouping of Licenses

81. *Background.* The Commission determined in the Competitive Bidding Second Report and Order that highly interdependent licenses should be grouped together and put up for bid at the same time in a multiple round auction because such grouping provides bidders with the most information about the complementary and substitutable licenses during the course of the auction. In the NPRM and Order, the Commission requested comment on whether it should endeavor to have a single auction. The Commission also solicited comments on alternative license groupings and requested bidders to explain how such groupings would benefit bidders.

82. *Discussion.* The Commission believes that all 39 GHz licenses are significantly interdependent. As a result, the optimal grouping of the licenses would be to put all of the licenses up for bid at the same time in order for bidders to have information about the prices of complementary and substitutable licenses during the auction. However, due to the large number of licenses anticipated to be auctioned (approximately 6,900), this approach may be burdensome for bidders. Specifically, placing all of the 39 GHz licenses up for bid in a single auction may overwhelm bidders with

the processing necessary to analyze effectively and efficiently the amount of information associated with such a large number of licenses. The Commission concludes that a series of simultaneous multiple round auctions would be more advantageous to bidders and the most administratively feasible means of distributing these licenses. At this time, the Commission believes that three channel pairs should be placed up for bid in each auction based on its review of the applicants' requests for channels in the 39 GHz band. The Commission nonetheless reserves the discretion to change the number of channels offered during an auction if it is efficient and administratively feasible to do so and delegate such authority to the Bureau.

ii. Reserve Price or Minimum Opening Bids

83. When licenses are subject to auction, the recently enacted Budget Act requires the Commission to prescribe methods by which a reasonable reserve price or a minimum opening bid is established, unless a determination is made that such an assessment is not in the public interest. Recently, in conjunction with the 800 MHz Specialized Mobile Radio (''SMR'') Service auction, the Bureau, pursuant to the Budget Act's provisions calling for the establishment of reserve prices or minimum opening bids in FCC auctions, proposed, *inter alia,* a formula for determining a reserve price or minimum opening bid for licenses, and sought comment on its formula and other proposals for the auction scheduled to begin on October 28, 1997. For the 39 GHz auction, the Commission directs the Bureau to issue a similar public notice proposing a method for determining a reserve price or minimum opening bid for 39 GHz licenses subject to auction and seeking comment on its proposed method and other proposals.

iii. Bid Increments

84. *Background.* Consistent with the approach for previous simultaneous multiple round auctions for other services, in the NPRM and Order the Commission proposed to establish minimum bid increments for bidding in each round of the auction based on the same considerations given in the Commission's prior orders. The Commission proposed that the bid increment be the greater of either: (1) A percentage of the high bid from the previous round or (2) a fixed dollar amount per megahertz per service area population (''MHz-pops''). The Commission also proposed to retain the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts.

85. *Discussion.* The Commission adopts its bid increment proposals, particularly given that no commenters opposed them. In fact, Milliwave supports the Commission's proposal to retain the discretion with respect to bidding increments. The Commission will follow the practice that it has used for other auctions and delegates authority to the Bureau to announce, by Public Notice prior to the auction, the general guidelines for bid increments.

iv. Stopping Rules

86. *Background.* When simultaneous multiple round auctions are used, a stopping rule must be established for determining when the auction is over. In simultaneous multiple round auctions, bidding may close separately on individual licenses, simultaneously on all licenses, or a hybrid approach may be used. Generally, the Commission proposed to adopt a simultaneous stopping rule in the 39 GHz auction in which bidding generally remains open on all licenses until there is no new acceptable bid for any license. In order to move the auction toward closure more quickly, the Commission further proposed to retain the discretion to declare when the auction will end, to vary the duration of bidding rounds or the interval at which bids are accepted.

87. *Discussion.* The Commission will adopt a simultaneous stopping rule whereby bidding will remain open on all licenses in an auction until bidding stops on every license. The Commission believes that allowing simultaneous closing for all licenses will afford bidders flexibility to pursue back-up strategies without running the risk that bidders will hold back their bidding until final rounds. As a general matter, the auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. In any event, the Commission adopts its proposal to retain the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. Milliwave supports the Commission's proposal to retain such discretion. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder has submitted a proactive waiver. The Commission also retains the discretion to announce license-by-license closings.

88. The Commission further retains the discretion to declare after 40 rounds that the auction will end after some specified number of additional rounds. Under such an approach, bids will be accepted only on licenses where the high bid has increased in the last three rounds. This will deter bidders from continuing to bid on a few low value licenses solely to delay the closing of the auction. It also will enable the Commission to end the auction when it determines that the benefits of terminating the auction and issuing licenses exceed the likely benefits of continuing to allow bidding.

v. Activity Rules

89. *Background.* In the Competitive Bidding Second Report and Order, the Commission adopted the Milgrom-Wilson activity rule as the preferred activity rule when a simultaneous stopping rule is used. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. In the NPRM and Order, the Commission tentatively concluded that the Milgrom-Wilson activity rule should be used in conjunction with the proposed simultaneous stopping rule for this auction. The Commission indicated its belief that the Milgrom-Wilson approach would best achieve the Commission's goals of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time.

90. *Discussion.* In accordance with § 1.2104 of the Commission's Rules and the guidelines adopted in the Competitive Bidding Second Report and Order, the Commission will employ the Milgrom-Wilson activity rule for the 39 GHz auction. Milliwave supports adoption of this rule. DCT appears to argue that the activity rule adds an incentive for bidders to apply for areas they do not intend to serve. No other comments on this issue were received. DCT's argument with respect to this activity rule is misplaced. The activity rules do not encourage applicants to apply for more licenses than they intend to use, and actually has the opposite effect. Indeed, the total number of licenses applied for determines the activity requirement. Therefore, the greater the number of licenses an applicant applies for the greater its activity level must be in order to maintain eligibility in the auction.

91. For the 39 GHz auction, the Commission will generally use the Milgrom-Wilson activity rule with some variations. Specifically, under the Milgrom-Wilson activity rule, the auction is divided into three stages and the minimum required activity level,

measured as a fraction of the bidder's eligibility in the current round, will increase during the course of the auction. As in previous auctions, the Commission will set, by announcement before the auction, the minimum required activity levels for each stage of the auction. The Commission retains the discretion to vary, by announcement before or during the auction, the required minimum activity levels (and associated eligibility calculations) for each auction stage. Retaining this flexibility will improve the Commission's ability to control the pace of the auction and help ensure that the auction is completed within a reasonable period of time. The Commission delegates to the Bureau the authority to set or vary the minimum activity levels if circumstances warrant a modification. The Bureau will announce any such modification by Public Notice. The auction will start in Stage One and move to Stage Two and then to Stage Three. The movement from one auction stage to the next will be dependent upon the auction activity level. The Bureau will retain the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next. However, under no circumstances can the auction revert to an earlier stage.

92. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, the Commission will (as it has in past auctions) provide bidders with five activity rule waivers that may be used in any round during the course of the auction. A waiver will preserve current eligibility in the next round, but cannot be used to correct an error in the amount bid. Bidders also will be afforded an opportunity to override the automatic waiver mechanism when they place a bid, if they wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility permanently will be reduced (according to the formulas specified above), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no valid bids will not keep the auction open. Bidders will have the option to proactively enter an activity rule waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open. The Bureau will retain the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control, and also retain the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.

vi. Duration of Bidding Rounds

93. *Background.* The Commission proposed in the NPRM and Order to retain the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (*e.g.,* run more than one round per day) in order to move the auction toward closure more quickly.

94. *Discussion.* The Commission will retain discretion to vary the duration of bidding rounds and the interval at which bids are accepted. In simultaneous multiple round auctions, bidders may need a significant amount of time to evaluate back-up strategies and develop their bidding plans. Milliwave, the sole commenter addressing this issue, supports the Commission's decision. The Bureau will announce any changes to the duration of and intervals between bidding rounds, either by Public Notice prior to the auction or by announcement during the auction.

D. Procedural and Payment Issues

i. Short-Form Applications

95. *Background.* In the Competitive Bidding Second Report and Order, the Commission determined that it should only require a short-form application (FCC Form 175) prior to the auction, and that only winning bidders should be required to submit a long-form license application after the auction.

96. *Discussion.* The Commission adopts the bidding application and certification procedures contained in § 1.1205 of the Commission's Rules, as amended by the Part 1 proceeding. Prior to the start of the 39 GHz auction, the Bureau will release an initial Public Notice announcing the auction. The initial Public Notice will specify the licenses to be auctioned and the procedures for the auction in the event that mutually exclusive applications are filed. The Public Notice will specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, and the deadline by which short-form applications must be filed and the amounts and deadlines for submitting the upfront payment. The Commission will not accept applications filed before or after the dates specified in the Public Notice. Applications submitted before the release of the Public Notice will be returned as premature. Likewise, applications submitted after the deadline specified by Public Notice will be dismissed with prejudice as untimely.

97. Soon after the release of the initial Public Notice, a Bidder Information Package will be made available to prospective bidders. The Bidder Information Package will contain information about incumbent licensees based on the Commission's licensing records. Bidders also should conduct their own due diligence regarding incumbent licensees within the 39 GHz band.

98. All bidders will be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), by the date specified in the initial Public Notice. Applicants are encouraged to file Form 175 electronically. Detailed instructions regarding electronic filing will be contained in the Bidder Information Package. The short-form applications will require applicants to provide the information required by § 1.2105(a)(2) of the Commission's Rules, as amended by the Part 1 proceeding.

ii. Amendments and Modifications

99. *Background.* To encourage maximum bidder participation, the Commission proposed to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction. Applicants whose short-form applications are substantially complete, but contain minor errors or defects, would be provided the opportunity to correct their applications prior to the auction.

100. *Discussion.* The Commission received no comments on its proposal. Thus, the Commission will apply the provisions set forth in Part 1 of the Commission's rules, including amendments adopted in the Part 1 proceeding, governing amendments to and modifications of short-form applications to the 39 GHz service. Upon reviewing the short-form applications, the Commission will issue a Public Notice listing all defective applications. Applicants with minor defects in their applications will be given an opportunity to cure them and resubmit a corrected version.

iii. Upfront Payments

101. *Background.* As in the case of other auctionable services, the NPRM and Order proposed to require all

auction participants to tender in advance to the Commission a substantial upfront payment. The Commission proposed to use the standard upfront payment formula of $2,500 or $0.02 per MHz-pop for the largest combination of MHz-pops, whichever is greater.

102. Discussion. The Commission previously has determined that a substantial upfront payment requirement is necessary to ensure that only serious, qualified bidders participate in auctions and to ensure that sufficient funds are available to satisfy any bid withdrawal or default payments that may be incurred. The Commission stated in the Competitive Bidding Second Report and Order that as a general matter it will base upfront payments on a formula of $0.02 per MHz-pop for the largest combination of MHz-pops a bidder anticipates being active on in any single round of bidding. The Commission also established a minimum upfront payment of $2,500, but indicated that the minimum amount could be modified on a service-specific basis. The Commission has varied the minimum upfront payment where it determined that it would result in too high an upfront payment for the service. Various commenters contend that the formula used in the PCS context is not appropriate for the 39 GHz band because it results in an upfront payment that is too high.

103. The Commission recognizes, as indicated by commenters, that for purposes of 39 GHz services the Commission's standard upfront payment formula may yield excessively high payment amounts relative to license values. Upfront payments at such levels could discourage participation in the auction and would be well above the amounts needed to discourage frivolous bidding and above what is necessary to ensure that sufficient funds are available to satisfy any bid withdrawal or default payments that may be incurred. Since the frequency range and anticipated uses of 39 GHz services are more like LMDS than broadband PCS, the Commission believes that it would be appropriate to set upfront payments closer to the levels used for LMDS than the $.02 per MHz-pop used in broadband PCS. LMDS upfront payments for 1150 MHz licenses range from $.00078 per MHz-pop for BTAs with population over one million to $.00026 per MHz-pop for BTAs with population under one hundred thousand. Since many of the 39 GHz licenses are heavily encumbered, it may also be appropriate to make license-by-license downward adjustments to the upfront payments to account for the reduced amount of spectrum available. Furthermore, by waiting until after the LMDS auction is conducted, the Commission will have better estimates regarding the value of 39 GHz spectrum and be able to more accurately set the upfront payment amounts. Therefore, to allow the Commission sufficient time to conduct such analysis, and to benefit from further auction experience, the Commission proposes not to set the amounts of the upfront payments for 39 GHz services at this time. Instead, the Commission delegates authority to the Bureau to set the amounts of upfront payments and to announce the levels by Public Notice.

iv. Down Payment and Full Payment

104. *Background*. In the NPRM and Order, the Commission tentatively concluded that winning bidders should be required to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).

105. *Discussion*. We adopt the requirement that winning bidders must supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). No commenters addressed this specific proposal. If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default payments due, amounts to 20 percent or more of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default payments due, the additional monies will be refunded.

106. The Commission also will require winning bidders to submit the required down payment by wire transfer to the Commission's lock-box bank, by a date and time to be specified by Public Notice, generally within ten (10) business days following release of the Public Notice announcing the close of bidding. All auction winners generally will be required to make full payment of the balance of their winning bids within ten (10) business days following Public Notice that the Commission is prepared to award the license.

107. The Commission notes that it has proposed to adopt a late fee in § 1.2109(a) in the Part 1 proceeding, to permit auction winners to make their final payments 10 business days after the payment deadline, provided that they also pay a late fee equal to five percent of the amount due. While the Commission does not adopt the proposed late fee provision in this proceeding, the Commission notes that should it ultimately adopt such a provision in the part 1 proceeding it shall apply to the 39 GHz band.

v. Bid Withdrawal, Default, and Disqualification

108. *Background*. In the Competitive Bidding Second Report and Order, the Commission noted the importance to the success of the competitive bidding process that potential bidders be required to make a monetary payment if they withdraw a high bid, are found not to be qualified to hold licenses, or default on payment of a balance due.

109. *Discussion*. To prevent insincere bidding, the Commission will apply the bid withdrawal, default and disqualification rules found in §§ 1.2104(g), and 1.2109 of the Commission's Rules, as amended by the part 1 proceeding, to the 39 GHz auctions. No commenters addressed this issue. Any bidder that withdraws a high bid before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. The Commission will calculate the bid withdrawal payment as either (1) the difference between the withdrawn bid net of bidding credit and the subsequent winning bid net of bidding credit, or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license, whichever is less. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid. If a winning bidder defaults after the close of an auction, the defaulting bidder will be required to pay the foregoing payment plus an additional payment of 3 percent of the subsequent winning bid or its own withdrawn bid, whichever is lower.

110. The Commission notes that it has proposed to adopt guidelines for erroneous bids in the part 1 proceeding, based upon the rationale discussed in the Atlanta Trunking Order. While it does not adopt the proposed guidelines in this proceeding, the Commission notes that should the Commission ultimately adopt such guidelines for erroneous bids in the part 1 proceeding it shall apply to the 39 GHz band.

vi. Long-Form Applications and Petitions to Deny

111. *Background*. In the NPRM and Order, the Commission stated that if the winning bidder makes a down payment in a timely manner, it would be required to file a long-form application.

112. *Discussion.* The Commission will apply the part 1 long-form procedures to the 39 GHz auction, as amended by the part 1 proceeding. No commenters addressed this issue. While long-form applications may be filed either electronically or manually, beginning January 1, 1998, all applications must be filed electronically. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact and triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, a Public Notice announcing the grants will be issued.

E. Regulatory Safeguards

i. Transfer Disclosure Requirements

113. *Background.* In section 309(j) of the Communications Act, Congress directed the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.''

114. *Discussion.* The Commission will adopt the transfer disclosure requirements contained in § 1.2111(a) of the Commission's rules, as amended by the Part 1 proceeding, for all 39 GHz licenses obtained through competitive bidding. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license(s).

ii. Anti-Collusion Rules

115. *Background.* In the Competitive Bidding Second Report and Order, the Commission adopted special rules prohibiting collusive conduct in the context of competitive bidding. The Commission indicated that such rules would serve the objectives of the Omnibus Budget Reconciliation Act of 1993 (Budget Act) by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and that disadvantage other bidders.

116. *Discussion.* The Commission adopts the rules prohibiting collusive conduct in §§ 1.2105 and 1.2107 of the Commission's rules, as amended by the Part 1 proceeding, for use in the 39 GHz auctions. The Commission notes that it has proposed to adopt two exceptions to the anti-collusion rules in the Commission's Part 1 proceeding. While it does not adopt the proposed exceptions in this proceeding, the Commission notes that whatever exceptions to the anti-collusion rules are ultimately adopted in the Part 1 proceeding shall apply to the 39 GHz band. Sections 1.2105 and 1.2107 of the Commission's rules operate, along with existing antitrust laws, as a safeguard to prevent collusion in the competitive bidding process. In addition, where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the auction process may be subject to a variety of sanctions, including forfeiture of their down payment or their full bid amount, revocation of their license(s), and possible prohibition from participating in future auctions.

F. Treatment of Designated Entities

i. Overview and Objectives

117. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' The statute required the Commission to ''consider the use of tax certificates, bidding preferences, and other procedures'' in order to achieve this Congressional goal. In addition, Section 309(j)(3)(B) provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote ''economic opportunity and competition * * * by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Finally, Section 309(j)(4)(A) provides that to promote these objectives, the Commission shall consider alternative payment schedules including installment payments.

118. The Commission has employed a wide range of special provisions and eligibility criteria designed to meet the statutory objectives of providing opportunities to designated entities in other spectrum-based services. The measures considered thus far for each service were established after closely examining the specific characteristics of the service and determining whether any particular barriers to accessing capital stood in the way of designated entity opportunities. For example, in the C block broadband PCS auction, small businesses received a 25 percent bidding credit and all entrepreneurs' block licensees were entitled to pay for these licenses under an installment plan. More recently, for the WCS auction, the Commission adopted tiered bidding credits of 25 percent for small businesses and 35 percent for very small businesses, declined to adopt installment payments for designated entities because of the expedited procedures imposed by the Appropriations Act which required entities to make full payment on the bid amount quickly, and adopted a tiered definition of small and very small businesses. For the 800 MHz SMR auction, the Commission also adopted tiered bidding credits of 25 percent for small businesses and 35 percent for very small businesses; eliminated installment payments for the upper 200 channels and deferred the decision on adopting installment payments in the lower 80 and General category channels to the outcome in the pending Part 1 proceeding; and adopted a tiered definition of small and very small businesses.

119. In the NPRM and Order, the Commission sought comment on whether the designated entity provisions adopted for broadband PCS should be applied here because this spectrum may be used in support of PCS. The Commission also sought comments broadly on how it can best promote opportunities for businesses owned by minorities and women in light of *Adarand.*

Commenters were encouraged to provide the Commission with as much evidence as possible with regard to past discrimination, continuing discrimination, discrimination in access to capital, underrepresentation and other significant barriers facing businesses owned by minorities and women in obtaining licenses in communications services.

ii. Eligibility for Bidding Credits

120. At this time the Commission has not developed a record sufficient to sustain race-based measures in the 39 GHz band based on the standard established by *Adarand Constructors* v. *Peña.* The Commission also believes that at this time the record is insufficient to support any gender-based provisions under the intermediate scrutiny standard. In addition, the

record in this proceeding does not demonstrate a need for special provisions for rural telephone companies beyond those that the Commission adopts for small businesses. The Commission thus will limit eligibility for special provisions for designated entities in the 39 GHz band to small businesses. While DCR supports adoption of special provisions designed to promote opportunities for businesses owned by minorities and women, it contends that fashioning provisions that can withstand the *Adarand* test should not be permitted to delay the licensing process. It notes that such a delay would be harmful to minority- and women-owned businesses attempting to attract financing and operate PCS systems. Neither DCR nor other commenters provide evidence with regard to past discrimination, continuing discrimination, or other significant barriers to minorities and women. Based on the record in this proceeding, the Commission intends to adopt bidding credits for applicants qualifying as small businesses, as discussed *infra.* As there will be small businesses with variable abilities to access capital, the Commission will tier the bidding credits to account for these differences. The Commission believes these provisions will provide small businesses with a meaningful opportunity to obtain licenses in the 39 GHz auction. Moreover, many minority- and women-owned entities are small businesses and will therefore qualify for the same special provisions that would have applied to them under the previous PCS rules. As such, these provisions will meet Congress' goal of promoting wide dissemination of 39 GHz licenses.

a. Small Business Definition. 121. *Background.* In the Competitive Bidding Second Memorandum Opinion and Order, the Commission stated it would define small business eligibility on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. In the NPRM and Order, the Commission proposed to define small businesses as those entities with not more than $40 million in average annual gross revenues for the preceding three years. In addition, the Commission proposed to apply the same affiliation and attribution rules for calculating revenues previously adopted for broadband PCS. The Commission noted, however, that the attribution rules for calculating gross revenues for broadband PCS are complex and sought comment on substituting the ''control group'' concept for a simpler attribution model. The Commission asked how the revenues of a small business entity should be calculated. The Commission also asked how investors should be treated in determining the eligibility of a small business, *e.g.*, whether only investors that hold ownership interests at a certain threshold should have their gross revenues included (*e.g.*, ownership interests of five percent would trigger attribution).

122. *Discussion.* As a general matter, the Commission adopts its proposed small business definition of an entity with not more than $40 million in average annual gross revenues for the preceding three years. The Commission concludes that this definition will accommodate the broadest cross-section of small businesses because it will include, at a minimum, all entities recognized as small businesses in the CMRS contexts for which the Commission has either adopted or proposed small business definitions. The Commission, however, rejects DCR's suggestion to adopt a definition which completely mirrors the small business definition in the broadband PCS C block rules. Significantly, if certain winning C block winners do not qualify as small businesses here, they will be able to participate in the 39 GHz auctions even though they will not be eligible for special provisions. Moreover, DCR has failed to demonstrate that control group equity structures and affiliation rule exceptions are warranted in the 39 GHz context. In fact, given the broad array of services that may be offered in the 39 GHz band, ranging from CMRS support services to niche service offerings, the Commission is reluctant to adopt such complex ownership structures absent evidence of the same factors present in the broadband PCS context. As discussed in further detail, *infra*, the Commission is providing bidding credits to an additional category of small businesses—very small businesses. A very small business is an entity that, together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

123. In determining whether an applicant qualifies for bidding credits as a small business or a very small business in the 39 GHz auction, the Commission will consider the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant. Specifically, for purposes of determining small business status, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. The Commission also chooses not to impose specific equity requirements on the controlling principals that meet the small business definition. The Commission will still require, however, that in order for an applicant to qualify as a small business, qualifying small business principals must maintain ''control'' of the applicant. The term ''control'' would include both *de facto* and *de jure* control of the applicant. For this purpose, the Commission will borrow from certain SBA rules that are used to determine when a firm should be deemed an affiliate of a small business. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. While the Commission is not imposing specific equity requirements on the small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business. Finally, the Commission rejects Winstar's proposal to adopt a high attribution standard to determine small business status because the absence of special provisions for minorities and women reduces the risk that applications falsely claiming such status will be filed. The existence of special small business provisions requires adoption of the provisions set forth herein in order to prevent their improper use.

b. *Bidding Credits.* 124. *Background.* In the NPRM and Order, the Commission proposed a 10 percent bidding credit for qualified small businesses. The Commission stated that the magnitude of the credit was reasonable and equitable in view of other proposals which will benefit designated entities, including the relatively small geographic licensing areas and the availability of installment payments. The Commission also proposed to allow eligible entities to apply the credit to all licenses. However, the Commission sought

comment on whether small businesses should receive a larger bidding credit, such 25 percent credit.

125. *Discussion.* Based upon the record, the Commission adopts tiered bidding credits for the 39 GHz service. Several commenters support the Commission's proposal to give bidding credits to small businesses. Some of these commenters also express concern that a 10 percent credit is too low. The Commission agrees with PCS Fund's contention that tiered bidding credits will promote vigorous competition not only between small businesses and large businesses but also between small businesses of different economic sizes.

126. The Commission believes that a tiered approach will encourage smaller businesses, that may be very well-suited to provide niche services, to participate in the provision of services in the 39 GHz band. For example, Winstar states that it believes that a major use of the spectrum will be for wireless local loop services. Microwave Partners indicates that it is looking at the spectrum for medical, public health and safety related applications, such as high speed transmission of medical data between physicians' offices and clinics and hospitals, laboratories and X-ray facilities; interactive videoconferencing for the continuing education of all health care personnel; and surveillance and security monitoring of high risk areas. The Commission recognizes that smaller businesses have more difficulty accessing capital and thus need a higher bidding credit. These tiered bidding credits are narrowly tailored to the varying abilities of businesses to access capital. Tiering also takes into account that different small businesses will pursue different strategies. Accordingly, small businesses with average gross revenues of not more than $40 million for the preceding three years will receive a 25 percent bidding credit. Very small businesses, that is, those small businesses with average gross revenues of not more than $15 million for the preceding three years, will receive a 35 percent bidding credit. Bidding credits for small businesses are not cumulative.

c. Installment Payments.

127. *Background.* In the *NPRM and Order,* the Commission proposed to allow small businesses to pay off their successful license bids in installments. In the *Competitive Bidding Second Report and Order,* the Commission concluded that installment payments are an effective means to address the inability of small businesses to obtain financing and will enable these entities to compete more effectively for the auctioned spectrum. Under the Commission's proposal, small business licensees may elect to pay their winning bid amount (less upfront payments) in installments over the ten-year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. The Commission sought comment on these proposals.

128. The Commission also sought comments on proposals for additional special payment provisions to further address the access to capital challenges faced by small businesses. The Commission proposed that small business licensees be permitted to make interest-only installment payments during the first two years of the license term. The Commission also proposed to reduce down payments for small businesses to 5 percent of the winning bid due five days after the auction closes and the remaining 5 percent down payment due five days after release of the Public Notice announcing that the Commission is prepared to award the license. Finally, the Commission sought comment on whether to offer ''tiered'' installment payments scaled to the financial size of a small business applicant.

129. *Discussion.* The Commission has carefully considered the use of installment payment plans for 39 GHz licenses and has decided not to adopt its proposal to allow small businesses to pay for their licenses in installment payments. First, Congress did not require the use of installment payments in all auctions, but rather recognized them as one means of promoting the various objectives of section 309(j)(3) of the Communications Act. The Commission continues to experiment with different means for achieving its obligations under the statute, and has offered installment payments to licensees in several auctioned wireless services. By no means, however, has Congress dictated that installment payments are the only tool in assisting small business. Indeed, the Commission has conducted several auctions without installment payments. The Commission concludes that it can meet its statutory obligations in the 39 GHz auction absent these provisions.

130. The Commission must balance competing objectives in section 309(j) that require, *inter alia,* that it promote the development and rapid deployment of new spectrum-based services (i.e., competition) and ensure that designated entities are given the opportunity to participate in the provision of such services. In assessing the public interest, the Commission must try to ensure that all the objectives of section 309(j) are considered. The Commission's experience with the installment payment program leads it to conclude that installment payments may not always serve the public interest. The Commission is presently examining issues relating to the administration of installment payments in several other proceedings. Because of the importance of these issues, the Commission plans to incorporate its decisions regarding installment payments and other financial issues into the Part 1 rulemaking.

131. Finally, as discussed *infra,* the Commission has adopted enhanced bidding credits for the 39 GHz auction. The bidding credits adopted for small businesses will help to promote access to the 39 GHz band and various new services by ensuring that small businesses will have genuine opportunities to participate in the 39 GHz auctions and in provision of services. The Commission also notes that, given the relatively large numbers of licenses available in the 39 GHz band, there should be opportunities for small business participation. The Commission has determined that, in view of the favorable tiered bidding credits adopted herein, it does not see the need to adopt reduced down payments for small businesses in order to ensure either their access to capital or their participation in the auction. Instead, the Commission will require a 20 percent down payment, the same down payment that is required of all other 39 GHz auction winners. Under this approach, all winning bidders will be required to supplement their upfront payments to bring their total payment to 20 percent of their winning bid within 10 business days of the close of the auction. Prior to licensing, they will be required to pay the balance of their winning bid. The Commission believes that a 20 percent down payment is appropriate here to ensure that all auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system and protect against possible default, while at the same time not being so onerous as to hinder growth and diminish access.

iii. Transfer Restrictions and Unjust Enrichment Provisions

132. *Background.* The Commission's unjust enrichment provisions are integral to the success of the special provisions for designated entities in the various auctionable services. In the Competitive Bidding Second Report and Order, the Commission outlined unjust enrichment provisions applicable specifically to designated entities. The Commission established these

provisions to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or intend to use the Commission's provisions to obtain a license at a lower cost than they otherwise would have to pay, and later to sell it for a profit. In the NPRM and Order, the Commission sought comment regarding the appropriate approach to prevent unjust enrichment.

133. *Discussion.* To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, the Commission will adopt unjust enrichment provisions similar to those adopted for other services, including, for example, narrowband PCS and 900 MHz SMR services. These rules provide that, during the initial license term, licensees utilizing bidding credits and seeking to assign or transfer control of a license to an entity that does not meet the eligibility criteria for bidding credits will be required to reimburse the government for the total value of the benefit conferred by the government, that is, the amount of the bidding credit, plus interest, before the transfer will be permitted. The rules which the Commission now adopts additionally provide that, if a licensee applies to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest, must be paid to the United States Treasury as a condition of approval of the assignment or transfer.

134. If a licensee that utilizes bidding credits seeks to make any change in ownership structure that would render the licensee ineligible for bidding credits, or eligible only for a lower bidding credit, the licensee must first seek Commission approval and reimburse the government for the amount of the bidding credit, or the difference between its original bidding credit and the bidding credit for which it is eligible after the ownership change, plus interest. Additionally, if an investor subsequently purchases an interest in the business and, as a result, the gross revenues of the business exceed the applicable financial caps, this unjust provision will apply. The amount of this payment will be reduced over time as follows: (1) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or, in the case of very small businesses transferring to small businesses, 100 percent of the difference between the bidding credit received by the former and the bidding credit received by the latter is eligible); (2) in year three of the license term the payment will be 75 percent; (3) in year four the payment will be 50 percent; and (4) in year five the payment will be 25 percent, after which there will be no payment. These assessments will have to be paid to the U.S. Treasury as a condition of approval of the assignment or transfer. Thus, a small business that received bidding credits seeking transfer or assignment of a license to an entity that does not qualify as a small business will be required to reimburse the government for the amount of the bidding credit, plus interest, before the transfer will be permitted.

iv. Entrepreneurs' Block

135. *Background.* In the Competitive Bidding Fifth Report and Order, 59 FR 37566 (July 22, 1994), the Commission established entrepreneurs' blocks in broadband PCS on which only qualified entrepreneurs, including small businesses, could bid. The Commission requested comment on whether the capital requirements of this service were anticipated to be so substantial that the Commission should insulate certain blocks from very large bidders in order to provide meaningful opportunities for designated entities. The Commission also requested comment on the need to adopt an entrepreneurs' block to ensure that there will be adequate spectrum available for communications links for broadband PCS entrepreneurs' block licensees.

136. *Discussion.* No commenter advocated the adoption of an entrepreneurs' block and the Commission decides not to adopt one in the 39 GHz service. First, the relatively large numbers of licenses available in the 39 GHz band should allow for extensive small business participation. Second, small businesses will have a significant opportunity to compete for licenses given the enhanced bidding credits adopted for small businesses. The bidding credits adopted for small businesses will help to promote access to the 39 GHz band and various new services by ensuring that small businesses will have genuine opportunities to participate in the 39 GHz auctions and in provision of services.

VI. Procedural Matters

A. Regulatory Flexibility Act

137. The analysis for this Report and Order pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, is contained herein as follows. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in this proceeding in ET Docket No. 95–183. The Commission sought written public comments on the proposals in the NPRM, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).

i. Need for and Purpose of This Action

138. In this Report and Order, the Commission adopts rules and procedures intended to facilitate the efficient use of the 38.6–40.0 GHz frequency band (the ''39 GHz'' band) and to permit different types of services to be offered therein. The purposes of this action are to provide support spectrum for emerging technologies, as well as to permit the development of innovative point-to-point or point-to-multipoint services. The Commission amends the rules for fixed, point-to-point microwave service in the 39 GHz band , so as to conform the regulatory approach toward operations in that band with its proposals for licensing the adjacent 37.0–38.6 GHz (37 GHz) band. Action on the 37.0–38.6 GHz band (the ''37 GHz'' band) has been postponed. In this item the Commission retains the existing channeling plan and amends some of the existing licensing and technical rules for the 39 GHz band in order to improve the regulatory environment for the development and implementation of a broad range of point-to-point microwave operations. The Commission also is adopting rules for competitive bidding for the 39 GHz band. By these actions, the Commission is creating a flexible regulatory vehicle for facilitating the development of a variety of fixed microwave operations that will provide, *inter alia*, communications infrastructure for commercial and private mobile radio operations and competitive wireless local telephone service. The Commission concludes that the public interest is served by the geographic licensing and competitive bidding rules adopted herein.

ii. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

139. No comments were filed in direct response to the IRFA. In general comments on the NPRM, however, some commenters raised issues that might

affect small entities. In particular, one commenter contended that in the auctions for the 39 GHz band, small entities may be at serious competitive disadvantage vis-a-vis large, well-financed companies, especially if the small businesses already expended substantial sums on obtaining PCS licenses. This commenter stated that if auctions are to be utilized, small business preferences must be designed to provide meaningful assistance to small business. Other commenters also supported small business preferences in the auctions. Various commenters contend that the upfront payment formula of $2,500 or $0.02 pop per MHz as proposed is excessive and will put a burden on small businesses. Further, some commenters claim that the proposed bidding credit offered to small business entities is too low. Many commenters support the concept of permitting all 39 GHz licensees to partition their licenses to any potential licensee meeting the relevant requirements. These commenters state that partitioning will assist small businesses that might be able to afford a portion of a license.

iii. Changes Made to the Proposed Rules

Service Rules.

140. In the NPRM, the Commission proposed a partitioning scheme with respect to rural telephone companies. The Commission has determined in the Report and Order that the option of partitioning should be made available to all entities eligible to be licensees in the 39 GHz band. The Commission also concluded that 39 GHz licensees should be permitted to disaggregate their spectrum blocks. In the NPRM the Commission also proposed to establish a maximum field strength limit that would apply at the boundaries of each service area which would provide that licensees' operations not exceeding this limit would avoid the need to complete the formal coordination process. However, in this Report and Order the Commission elects not to adopt a field strength limit but will continue to use the frequency coordination procedures outlined in § 101.103(d) of the Commission's Rules. In addition, the Commission proposed new build-out requirements for 39 GHz licensees to ensure that the spectrum was being used efficiently. The Commission suggested four construction build-out options, each of which depended upon a specific number of fixed stations to be built within the licensees' geographic area. In this Report and Order, the Commission concludes that a substantial service standard is the most appropriate benchmark for a build-out requirement for the 39 GHz band, because it will permit flexibility in system design and market development, and provide a clear and expeditious accounting of spectrum use by licensees to ensure that service is being provided to the public.

Auction Rules.

141. The Commission has delegated authority to the Wireless Telecommunications Bureau to modify the upfront payment calculation for the 39 GHz auction if circumstances warrant and such modification is in the public interest.

142. The Commission in general adopted the proposed small business definition of an entity with not more than $40 million in average annual gross revenues for the preceding three years. As discussed below, with respect to bidding credits, the Commission created an additional category of small businesses—very small businesses. These are entities with not more than $15 million in average annual gross revenues for the preceding three years. In determining whether an applicant qualifies as a small business, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. No specific equity requirements will be imposed on the controlling principals that meet the small business definition. However, in order for an applicant to qualify as a small business, qualifying small business principals must maintain ''control'' of the applicant. The term control will include both *de facto* and *de jure* control of the applicant.

143. In the NPRM, the Commission proposed a 10 percent bidding credit for qualified small businesses. In this item, the Commission adopts tiered bidding credits. Tiered bidding credits will promote vigorous competition not only between small businesses and large businesses but also between small businesses of different economic sizes. In addition, a tiered approach will encourage smaller businesses, that may be very well-suited to provide niche services to participate in this auction. Accordingly, small businesses with average gross revenues of not more than $40 million for the preceding three years will receive a 25 percent bidding credit. Smaller businesses with average gross revenues of not more than $15 million for the preceding three years will receive a 35 percent bidding credit. Bidding credits for small businesses will not be cumulative.

iv. Description and Estimate of the Small Entities Subject to the Rules

144. The rules adopted in this Report and Order will allow cellular, PCS, and other small communication entities that require support spectrum to obtain licenses through competitive bidding. Pursuant to 47 CFR 101.1209, the Commission has defined ''small business entity'' in the 39 GHz auction as a firm that had gross revenues of less than $40 million in the three previous calendar years. Approval for this regulation defining ''small business entity'' in the context of 39 GHz was requested from the Small Business Administration on May 8, 1997.

a. Estimates for Cellular Licensees.

145. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to determine the precise number of cellular firms which are small businesses.

146. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees. The Commission therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of the evaluations and conclusions in this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, the Commission does not know the number of cellular licensees, since a cellular licensee may own several licenses.

b. Estimates for Broadband PCS Licensees.

147. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm

that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.

148. The Commission has auctioned broadband PCS licenses in Blocks A through F. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. For the C Block auction, a total of 255 qualified bidders participated in the auction. Of the qualified bidders, all were entrepreneurs—defined for this auction as entities together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Of the 255 qualified bidders, 253 were ''small businesses''—defined for this auction as entities together with affiliates, having gross revenues of less than $40 million at the time the FCC Form 175 application was filed. After a total of 184 rounds, the number of winning bidders totalled 89, all of whom were small business entrepreneurs, who won a total of 493 licenses. To date, two of the winning bidders defaulted on 18 of the licenses. Those licenses were reauctioned in Auction #10. For the D, E, and F Block auction, the D and E blocks were open to all licensees; the F block was open to bidders who qualified as an entrepreneur—defined for this auction as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Of the 153 initial bidders for the three blocks, 105 qualified as entrepreneurs. The D, E, and F Block auction ended with 125 bidders winning 1472 licenses and the FCC holding 7 licenses as a result of bid withdrawals. For the D, E, and F Block auction, 93 of the winning bidders qualified as small entities as defined for that auction. Accordingly, the Commission estimates that 48% of the winning bidders for the auction of broadband PCS licenses in Blocks A through F are small businesses.

c. Estimates for Point-to-Point or Point-to-Multipoint Entities.

149. The rules adopted in this Report and Order will apply to any current licensee or any company which chooses to apply for a license in the 39 GHz band. The Commission has not developed a definition of small entities applicable to such licensees. The SBA definitions of small entity for 39 GHz band licensees are the definitions applicable to radiotelephone companies. The definition of radiotelephone companies provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the potential number of small businesses interested in the 39 GHz frequency band and is unable at this time to determine the precise number of potential applicants which are small businesses.

150. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of telecommunications providers which are small entities because it combines all radiotelephone companies with 500 or more employees. The Commission therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, a majority of 39 GHz entities providing radiotelephone services could be small businesses under the SBA's definition.

151. However, in the NPRM, the Commission proposed to define a small business as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding years of less than $40 million. The Commission has not yet received approval by the SBA for this definition. The Commission assumes, for purposes of its evaluations and conclusions in this FRFA, that nearly all of the 39 GHz licensees will be small entities, as that term is defined by the SBA.

v. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Service Rules.

152. There are some reporting requirements imposed by the Report and Order. In most instances, it is likely that the entities filing will require the services of persons with technical or engineering expertise to prepare reports. In order to facilitate operation in the 39 GHz band, the Commission is not imposing separate regulatory burdens that may affect small businesses. Generally, all applicants will be required to file applications for authorization to construct and operate and to adhere to the technical criteria set forth in the final rules.

Auction Rules.

153. All license applicants will be subject to reporting and record keeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for 39 GHz license auctions by filing a short-form application and will file a long-form application at the conclusion of the auction. Additionally, entities seeking treatment as ''small businesses'' will need to submit information pertaining to the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant.

vi. Steps Taken to Minimize the Economic Impact on Small Entities

Service Rules.

154. The Commission adopts service and technical rules that facilitate the accommodation of all proposed and existing systems in the 39 GHz band. The Commission believes these rules are a reasonable accommodation of all competing interests in this band, including small entities. The plans for the 39 GHz band provide both small entities and larger businesses the same opportunity to develop and operate viable systems within the band, and initiate competitive services.

Auction Rules.

155. Section 309 (j)(3)B) of the Communications Act of 1934, as amended, provides that in establishing eligibility criteria and bidding methodologies the Commission shall, *inter alia*, ''promote[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Section 309(j)(4)(A) provides that in order to promote such objectives, the Commission shall ''consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods * * * and combinations of such schedules and methods.'' Section 309(j)(4)(D) also requires the Commission to ''ensure that small business, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' Therefore, it is appropriate to establish special provisions in the 39 GHz band for competitive bidding by small businesses.

156. The Commission notes that Congress made specific findings with regard to access to capital in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that small business concerns, which represent higher degrees of risk in

financial markets than do large businesses, are experiencing increased difficulties in obtaining credit. The Commission believes that small businesses applying for 39 GHz band licenses should be entitled to some type of bidding credits. In awarding licenses, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission concludes that special provisions for small businesses are appropriate for awarding licenses because construction of systems may require a significant amount of capital, and minority- and women-owned businesses will be able to take advantage of specific provisions that the Commission adopts for small businesses.

157. The Commission has adopted various special provisions to encourage and facilitate participation by small entities in the auctions. In particular, small businesses with revenues of not more than $40 million are eligible for a 25 percent bidding credit, and small businesses with average annual gross revenues of not more than $15 million are eligible for a 35 percent bidding credit on all 39 GHz licenses. These bidding credits are not cumulative.

158. In addition, the Commission has extended partitioning to all entities eligible to be licensees in the 39 GHz band. The Commission also concluded here to allow all 39 GHz licensees to disaggregate their spectrum blocks. These provisions should help facilitate market entry by small entities who may lack the financial resources to participate in the auction alone. These entities will be able to participate in the provision of services by purchasing a portion of a license.

vii. Significant Alternatives Considered and Rejected

Service Rules.

159. The Commission considered and rejected several alternatives to the licensing plan and competitive bidding rules adopted. In response to a Petition for Rule Making filed by the Telecommunications Industry Association (TIA), the Commission initiated this proceeding. This Report and Order does not provide direct relief requested by TIA in particular areas. For example, the Commission rejected the individual link licensing alternative which was suggested by TIA. The Commission also considered and rejected proposals to license spectrum on an MTA or Rectangular Service Area basis because it determined that BTA licensing would further spectrum management and better serve the 39 GHz band because the wide variety of services proposed by commenters relate to PCS systems or are local in nature. In addition, BTAs which are smaller than MTAs, will facilitate the ability of smaller systems to participate in geographic area licensing. Therefore, based on the record in this proceeding, the Commission believes that BTAs would be more appropriate for licensing the 39 GHz band.

160. The Commission also considered various proposals by entities relating to the disposition of pending 39 GHz applications. The processing procedures adopted are based on some proposed alternatives. Other proposals were rejected, such as the suggestion that the Commission process pending mutually exclusive applications. The Commission determined that pending mutually exclusive applications will be dismissed without prejudice, and all applicants, including small business entities, would be permitted to submit new applications under the competitive bidding rules established in this proceeding. Because applicants had ample opportunity to file amendments prior to the onset of this rule making, in order to avoid mutual exclusivity, the Commission believes the above procedure is the best approach. The Commission also considered various divergent proposals made in response to the build-out plan for incumbents and for new 39 GHz licensees. With the goal of accommodating various entities, the Commission developed specific construction requirements and implemented a ''substantial service'' showing for these entities. By rejecting such build-out alternatives which required the construction of significant amounts of links within a short time frame, the Commission adopts an alternative which takes into consideration concerns raised by commenters, including small business entities, regarding establishing services which are specialized and do not lend to traditional construction requirements.

Auction Rules.

161. The Commission considered and rejected several significant alternatives with respect to the auction rules. The Commission rejected the use of any type of licensing method in favor of competitive bidding as the method of awarding 39 GHz licenses. The Commission concluded that awarding 39 GHz licenses by auction meets the congressional criteria in § 309(j) of the Communications Act, and will likely promote the Act's objectives. The Commission also rejected a sequential or other auction design in favor of a simultaneous multiple round auction design because the licenses are interdependent. As to designated entities that may be entitled to special provisions, the Commission determined that based upon the record it only would extend such special provisions to small businesses. The Commission rejected offering reduced upfront or down payments and payment by installment payments and, instead, adopted tiered bidding credits for small businesses. The Commission adopted a small business definition of an entity with not more than $40 million in average gross revenues for the preceding three years. The Commission held that this definition of small business will accommodate the broadest cross-section of small businesses because it will include, at a minimum, all those entities recognized as small businesses in the CMRS contests for which the Commission has adopted or proposed small businesses definitions. Since the Commission rejected a straight across-the-board 10 percent bidding credit for qualified small businesses and, based upon the record, adopted tiered bidding credits for the 39 GHz service, small businesses with average gross revenues of not more than $40 million for the preceding three years will receive a 25 percent bidding credit and smaller businesses with average gross revenues of not more than $15 million for the preceding three years will receive a 35 percent bidding credit.

viii. Report to Congress

162. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Ex Parte Rules—Non-Restricted Proceeding

163. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1201, 1.1203, and 1.1206(a).

C. Paperwork Reduction Act

164. Written comments by the public on the modified information collections are due March 9, 1998. Written

comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 7, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington D.C. 20503 or via the Internet to fain__t@al.eop.gov.

D. Ordering Clauses

165. Authority for issuance of this Report and Order and Second Notice of Proposed Rule Making is contained in sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 257, 303(r), and 309(j).

166. *It is ordered*, that parts 1 and 101 of the Commission's Rules are amended as specified effective April 7, 1998. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

List of Subjects in 47 CFR Parts 1 and 101

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 1 and 101 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1— PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j), unless otherwise noted.

2. Amend § 1.2102 by adding new paragraph (a)(10) and revising paragraph (b)(4) introductory text to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(10) Basic trading area licenses in the 38.6–40.0 GHz band.

(b) * * *

(4) Applications for channels in all frequency bands, except those listed in paragraph (a)(10), which are used as an intermediate link or links in the provision of continuous, end-to-end service where no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are:

* * * * *

PART 101— FIXED MICROWAVE SERVICES

3. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. §§ 524, 303.

4. Amend § 101.13 by revising paragraph (d) to read as follows:

§ 101.13 Application forms and requirements for private operational fixed stations.

* * * * *

(d) Application for renewal of station licenses must be submitted on such form as the Commission may designate by public notice. Applications for renewal must be made during the license term and, except for renewal applications in the 38.6–40.0 GHz band, should be filed within 90 days, but not later than 30 days, prior to the end of the license term. Renewal applications in the 38.6–40.0 GHz band must be filed eighteen months prior to the end of the license term. See § 101.17 for renewal requirements for the 38.6–40.0 GHz frequency band. When a licensee submits a timely application for renewal of a station license, the existing license for that station will continue as a valid authorization until the Commission has made a final decision on the application. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single ''blanket'' application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for such radio station(s).

* * * * *

5. Amend § 101.15 by revising paragraph (c) to read as follows:

§ 101.15 Application forms for common carrier fixed stations.

* * * * *

(c) *Renewal of station license.* Except for renewal of special temporary authorizations and authorizations in the 38.6–40.0 GHz band, FCC Form 415 (''Application for Authorization in the Microwave Services'') must be filed by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. For authorizations in the 38.6–40.0 GHz band, the licensee must file FCC Form 415 eighteen months prior to the expiration date of the license sought to be renewed. See § 101.17 for renewal requirements for the 38.6–40.0 GHz frequency band. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single ''blanket'' application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for each radio service. When a licensee submits a timely application for renewal of a station license, the existing license continues in effect until the Commission has rendered a decision on the renewal application.

* * * * *

6. Add new § 101.17 to read as follows:

§ 101.17 Performance requirements for the 38.6–40.0 GHz frequency band.

(a) All 38.6–40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which they hold a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of ''substantial.''

(1) A description of the 38.6–40.0 GHz band licensee's current service in terms of geographic coverage;

(2) A description of the 38.6–40.0 GHz band licensee's current service in terms of population served, as well as any additional service provided during the license term;

(3) A description of the 38.6–40.0 GHz band licensee's investments in its system(s) (type of facilities constructed and their operational status is required);

(b) Any 38.6–40.0 GHz band licensees adjudged not to be providing substantial service will not have their licenses renewed.

7. Amend § 101.45 by revising paragraph (d) to read as follows:

§ 101.45 Mutually exclusive applications.

* * * * *

(d) Except for applications in the 38.6–40.0 GHz band, private operational fixed point-to-point microwave applications for authorization under this Part will be entitled to be included in a random selection process or to comparative consideration with one or

more conflicting applications in accordance with the provisions of § 1.227.(b)(4) of this chapter. Applications in the 38.6–40.0 GHz band are subject to competitive bidding procedures in §§ 101.1201–1209.

* * * * *

8. Amend § 101.51 by revising paragraph (a) introductory text to read as follows:

§ 101.51 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where neither competitive bidding nor the random selection processes apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

* * * * *

9. Amend § 101.53 by adding new paragraph (g) to read as follows:

§ 101.53 Assignment or transfer of station authorization.

* * * * *

(g) Assignees receiving Commission authority to acquire a 38.6–40.0 GHz license pursuant to this paragraph must meet the assignors' construction requirement dates. *See* §§ 101.63 and 101.64 of this part.

10. Amend § 101.55 by revising the introductory text of paragraph (a) and paragraph (b)(2) to read as follows:

§ 101.55 Considerations involving assignment or transfer applications.

(a) Licenses not authorized pursuant to competitive bidding procedures may not be assigned or transferred prior to completion of construction of the facility. However, consent to the assignment or transfer of control of such a license may be given prior to the completion of construction where:

* * * * * *

(b) * * *

(2) That have not been constructed, unless the authorizations were granted pursuant to a competitive bidding procedure; or

* * * * *

11. Add § 101.56 to read as follows:

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

(a)(1) The holder of a Basic Trading Area (BTA) authorization to provide service in the 38.6–40 GHz band pursuant to the competitive bidding process may enter into agreements with eligible parties to partition any portion of its service area according to county boundaries, or according to other geopolitical subdivision boundaries. Alternatively, licensees may enter into agreements or contracts to disaggregate portions of spectrum, provided acquired spectrum is disaggregated according to frequency pairs.

(2)(i) Contracts must be filed with the Commission within 30 days of the date that such agreements are reached.

(ii) The contracts must include descriptions of the areas being partitioned or spectrum disaggregated. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (i.e., Metropolitan Service Area or Rural Service Area) or county lines are followed. If geographic coordinate points are used, they must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(3) Parties to partitioning and spectrum disaggregation contracts must file concurrently with such contracts the following:

(i) An application FCC Form 415 for authority to operate a 38.6–40 GHz service facility.

(ii) Application for assignment to operate in the market area being partitioned or to operate in the market area covered by the disaggregated spectrum.

(iii) A completed FCC Form 430, where applicable, if not already on file at the Commission.

(b) The eligibility requirements applicable to BTA authorization holders also apply to those individuals and entities seeking partitioned or disaggregated spectrum authorizations.

(c) Subsequent to issuance of the authorization for a partitioned service area, the partitioned area will be treated as a separate protected service area.

(d) When any area within a BTA becomes a partitioned service area, the remaining counties and geopolitical subdivision within that BTA will be subsequently treated and classified as a partitioned service area.

(e) At the time a BTA is partitioned, the Commission shall cancel the BTA authorization initially issued and issue a partitioned service area authorization to the former BTA authorization holder.

(f) The duties and responsibilities imposed upon BTA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum disaggregation.

(g) The build-out requirements for the partitioned service area or disaggregated spectrum shall be the same as applied to the BTA authorization holder.

(h) The license term for the partitioned service area or disaggregated spectrum shall be the remainder of the period that would apply to the BTA authorization holder.

(i) Licensees, except those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

12. Amend § 101.63 by revising paragraphs (a) and (d) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

(a) Except for stations licensed in the 38.6–40.0 GHz band, each station licensed under this part must be in operation within 18 months from the initial date of grant. Modification of an operational station other than one licensed in the 38.6–40.0 GHz band must be completed within 18 months of the date of grant of the applicable modification request.

* * * * *

(d) Except for stations licensed in the 38.6–40.0 GHz band, requests for extension of time to be in operation may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed period. Such requests must be submitted no later than 30 days prior to the end of the prescribed period to the Federal Communications Commission, Gettysburg, PA 17325–7245.

* * * * *

13. Add § 101. 64 to read as follows:

§ 101.64 Service areas.

Service areas for 38.6–40.0 GHz service are BTAs as defined below. BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 40–44. Rand McNally organizes the 50 States and the District of Columbia into 487 BTAs. The BTA Map is available for public inspection at the Wireless Telecommunications Bureau, Room 5322, 2025 M Street, NW., Washington, DC. The BTA service areas are based on the Rand McNally 1995 Commercial Atlas & marketing Guide, 123rd Edition, at pages 40–44, with the following additions licensed separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayaguez/

Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Sabana Grande, Salinas, San German, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

14. Amend § 101.103 by adding paragraphs (i)(1) and (i)(2) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(i)(1) When the licensed facilities are to be operated in the band 38,600 MHz to 40,000 MHz and the facilities are located within 16 kilometers of the boundaries of a Basic Trading Area, each licensee must complete the frequency coordination process of § 101.103(d) with respect to neighboring BTA licensees and existing licensees within its BTA service area that may be affected by its operation prior to initiating service. In addition to the technical parameters listed in § 101.103(d), the coordinating licensee must also provide potentially affected parties technical information related to its subchannelization plan and system geometry.

(2) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the licensee, either electronically or in writing, within 10 days of notification. Every reasonable effort should be made by all licensees to eliminate all problems and conflicts. If no response to notification is received within 10 days, the licensee will be deemed to have made reasonable efforts to coordinate and may commence operation without a response. The beginning of the 10-day period is determined pursuant to § 101.103(d)(v).

15. Amend § 101.107 by revising the last entry in the table and adding new footnote 9 to read as follows:

§ 101.107 Frequency tolerance.

* * * * *

FREQUENCY TOLERANCE

[Percent]

Frequency (MHz)	All fixed and based stations	Mobile stations over 3 watts	Mobile stations 3 watts or less
* *	*	*	*
31,300 to 40,000[6]	0.03[9]	0.03	0.03
* *	*	*	*

[9] Equipment authorized to be operated in the 38,600–40,000 MHz band is exempt from the frequency tolerance requirement noted in the above table.

16. Amend § 101.109 by adding a new footnote 7 to the entry in the second column for 38,600 to 40,000, and by adding a new entry at the end of the table to read as follows:

§ 101.109 Bandwidth.

* * * * *

Frequency band (MHz)	Maximum authorized bandwidth
* * * *	*
38,600 to 40,000	50 MHz[7]
Above 40,000	([3])
* * * *	*

[7] For channel block assignments in the 38,600–40,000 MHz band, the authorized bandwidth is equivalent to an unpaired channel block assignment or to either half of a symmetrical paired channel block assignment. When adjacent channels are aggregated, equipment is permitted to operate over the full channel block aggregation without restriction.

Note to Footnote 7: Unwanted emissions shall be suppressed at the aggregate channel block edges based on the same roll-off rate as is specified for a single channel block in paragraphs 101.111(a)(ii) and (iii) of this chapter.

17. Amend § 101.115 by removing the entry for ''Above 31,300'' in the table in paragraph (c)(2), and adding the following entry and new footnote 14 to read as follows:

§ 101.115 Directional antennas.

* * * * *

(c) * * *

(2) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points(1) (included angles in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
*	*	*	*	*		*		*		*
38,600 to 40,000[14]	A	n/a	38	25	29	33	26	42	55	55
	B	n/a	38	20	24	28	32	35	36	36

[14] Stations authorized to operate in the 38,600–40,000 MHz band may use antennas other than those meeting the Category A standard. However, the Commission may require the use of higher performance antennas where interference problems can be resolved by the use of such antennas.

18. Amend § 101.147 by redesignating paragraph (v) as (v)(1), revising newly redesignated (v)(1) and adding new paragraph (v)(2) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(v)(1) Assignments in the band 38,600–40,000 MHz must be according to the following frequency plan:

Channel group A		Channel group B	
Channel No.	Frequency band limits (MHz)	Channel No.	Frequency band limits (MHz)
1–A	38,600–38,650	1–B	39,300–39,350
2–A	38,650–38,000	2–B	39,350–39,400
3–A	38,700–38,750	3–B	39,400–39,450
4–A	38,750–38,800	4–B	39,450–39,500
5–A	38,800–38,850	5–B	39,500–39,550
6–A	38,350–38,900	6–B	39,550–39,600
7–A	38,900–38,950	7–B	39,600–39,650
8–A	38,950–39,000	8–B	39,650–39,700
9–A	39,000–39,050	9–B	39,700–39,750
10–A	39,050–39,100	10–B	39,750–39,800
11–A	39,100–39,150	11–B	39,800–39,850
12–A	39,150–39,200	12–B	39,850–39,900
13–A	39,200–39,250	13–B	39,900–39,950
14–A	39,250–39,300	14–B	39,950–40,000

(2) Channel Blocks 1 through 14 are assigned for use within Basic Trading Areas (BTAs). Applicants are to apprise themselves of any grandfathered links within the BTA for which they seek a license. All of the channel blocks may be subdivided as desired by the licensee and used within its service area as desired without further authorization subject to the terms and conditions set forth in § 101.149.

19. Add Subpart N to Section 101 to read as follows:

Subpart N—Competitive Bidding Procedures for the 38.6–40.0 GHz Band

Subpart N—Competitive Bidding Procedures for the 38.6–40.0 GHz Band

§ 101.1201 38.6–40.0 GHz subject to competitive bidding.

Mutually exclusive 38.6–40.0 GHz initial applications are subject to competitive bidding. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q will apply unless otherwise provided in this part.

§ 101.1202 Competitive bidding design for 38.6–40.0 GHz licensing.

The following competitive bidding procedures generally will be used in 38.6–40.0 GHz auctions. Additional, specific procedures may be set forth by public notice. The Commission also may design and test alternative procedures. See 47 CFR §§ 1.2103 and 1.2104. The Commission will employ simultaneous multiple round bidding when choosing from among mutually exclusive initial applications to provide 38.6–40.0 GHz service, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

§ 101.1203 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which 38.6–40.0 GHz licenses will be auctioned.

(b) *Grouping.* The Commission will conduct a series of sequential auctions of three channels at a time within each BTA unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme.

(c) *Minimum bid increments.* The Commission will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping rules.* The Commission will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity rules.* The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

§ 101.1204 Bidding application procedures.

All applicants to participate in competitive bidding for 38.6–40.0 GHz licenses must submit applications on FCC Forms 175 pursuant to the provisions of § 1.2105 of this Chapter. The Wireless Telecommunications Bureau will issue a public notice announcing the availability of 38.6–40.0 GHz licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This public notice also will specify the date on or before which applicants intending to participate in a 38.6–40.0 auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the forms, any filing fee that must accompany the application or any upfront payment that need to be submitted, and the location where the application must be filed. In addition, each applicant must identify its status as a small business or rural telephone company.

§ 101.1205 Submission of upfront payments and down payments.

(a) Each bidder in the 38.6–40.0 GHz auction will be required to submit an upfront payment. This upfront payment will be based upon a formula established by the Wireless Telecommunications Bureau and announced by public notice prior to the auction.

(b) Each winning bidder in the 38.6–40.0 GHz auction shall make a down payment to the Commission in an amount sufficient to bring its total deposits up to 20 percent of its winning bid by a date and time to be specified by public notice, generally within ten business days following the close of bidding. Full payment of the balance of the winning bids shall be paid within ten days after public notice announcing that the Commission is prepared to award the license. The grant of the application is conditional upon receipt of full payment. The Commission generally will grant the license within a

reasonable period of time after receiving full payment.

§ 101.1206 Long-form applications.

Each winning bidder will be required to submit a long-form application. Winning bidders must submit long-form applications within ten (10) business days after being notified by Public Notice that it is the winning bidder. Long-form applications shall be processed under the rules contained in parts 1 and 101 of the Commission's rules.

§ 101.1207 Procedures for filing petitions to deny against long-form applications.

The applicable procedures for the filing of petitions to deny the long-form applications of winning bidders contained in § 1.2108 of the Commission's rules shall be followed by the applicant (see 47 CFR 1.2108).

§ 101.1208 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, (as defined in § 101.1209(b)(1)(ii) may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

(b) *Unjust enrichment.* (1) A small business seeking transfer or assignment of a license to an entity that is not a small business under the definitions in § 101.1209(b)(1)(i) and (ii), will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this penalty will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit: in year three of the license term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty. These penalties must be paid back to the U.S. Treasury as a condition of approval of the assignment or transfer.

(2) If a small business that utilizes a bidding credit under this section seeks to assign or transfer control of its license to a small business meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 101.1209 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1201 through 101.1209, unless otherwise specified in those sections.

(b) *Small business and very small business.* (1)(i) A small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $40 million for the preceding three years.

(ii) A very small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the small business or very small business definitions set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated.

(3) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) and (b)(2) of this section.

(c) *Rural telephone company.* A rural telephone company means a local exchange carrier operating entity to the extent that such entity—

(A) Provides common carrier service to any local exchange carrier study area that does not include either—

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census, as of August 10, 1993;

(B) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) Has less than 15 per cent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(d) *Gross Revenues. Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited quarterly financial statements for the relevant number of calendar years preceding January 1, 1996, or, if audited financial statements were not prepared on a calendar-year basis, of the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(e) *Affiliate.* (1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as ''the applicant'') if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an ''identity of interest'' with the applicant.

(2) *Nature of control in determining affiliation.*

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (e)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a

corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (e)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1. Two shareholders in Corporation Y each have attributable interests in the same application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2. One shareholder in Corporation Y, shareholder A, has an attributable interest in a SMR application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the SMR application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal affiliation*. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation*. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context ''immediate family member'' means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (e)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership*. (i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (e)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (e)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (e)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business option is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(11) *Exclusion from affiliation coverage.* For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

[FR Doc. 98–1731 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 246

[DFARS Case 97–D326]

Defense Federal Acquisition Regulation Supplement; Warranties in Weapon System Acquisitions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 847 of the National Defense Authorization Act for Fiscal Year 1998. Section 847 repealed the requirement for contractor guarantees on major weapon systems.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 97–D326.

SUPPLEMENTARY INFORMATION:

A. Background

Section 847 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) repealed 10 U.S.C. 2403, which required contractor guarantees on major weapon systems. This final rule removes the DFARS language that implemented 10 U.S.C. 2403.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D326 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule imposes no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 246

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 246 is amended as follows:

1. The authority citation for 48 CFR Part 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 246—QUALITY ASSURANCE

2. Section 246.703 is revised to read as follows:

246.703 Criteria for use of warranties.

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.704 [Amended]

3. Section 246.704 is amended by removing paragraph (1) and redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

246.770 through 246.770–8 [Removed].

4. Sections 246.770 through 246.770–8 are removed.

[FR Doc. 98–2924 Filed 2–5–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 020298B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic

zone (EEZ) in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: The closure is effective 12:00 noon, local time, February 3, 1998, through June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast subzone of 865,000 lb (392,357 kg).

That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached or is projected to be reached by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast subzone was reached on February 3, 1998. Accordingly, the commercial fishery for king mackerel for such vessels in the Florida west coast subzone is closed effective 12:00 noon, local time, February 3, 1998, through June 30, 1998, the end of the fishing year.

The Florida west coast subzone extends from 87°31'06'' W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on August 2, 1997 (62 FR 42417, August 7, 1997). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using hook-and-line gear in the Florida west coast subzone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery on January 7, 1998 (63 FR 1772, January 12, 1998). Thus, with this closure, all commercial fisheries for king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast subzone through June 30, 1998.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel permitted to fish under a commercial quota may fish for Gulf group king mackerel in the EEZ in the closed zones or retain Gulf group king mackerel in or from the EEZ of the closed zones. A person aboard a vessel for which the permit indicates both commercial king mackerel and charter/headboat for coastal migratory pelagic fish may continue to retain king mackerel under the bag and possession limit set forth in 50 CFR 622.39(c)(1)(ii), provided the vessel is operating as a charter vessel or headboat.

During the closure, king mackerel from the closed zones taken in the EEZ, including those harvested under the bag limit, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 2, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3066 Filed 2–3–98; 2:27 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.971208296–7296–01 ; I.D. 013098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 interim specifications of Atka mackerel in these areas.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 2, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The 1998 interim specifications of Atka mackerel total allowable catch for the Eastern Aleutian District and the Bering Sea subarea was established by Interim 1998 Harvest Specifications (62 FR 65626, December 15, 1997) for the BSAI as 3,187 metric tons (mt). See § 679.20(c)(2)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,587 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with

§ 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2938 Filed 2–2–98; 4:55 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208295–7295–01; I.D. 013098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 2, 1998, until the effective date of the Final 1998 Harvest Specification of Groundfish, as published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch in Statistical Area 630 was established by the Interim 1998 Harvest Specifications (62 FR 65622, December 15, 1997) as 7,985 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification of pollock in Statistical Area 630 soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,485 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of pollock in Statistical Area 630 of the GOA. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2939 Filed 2–2–98; 4:55 pm]

BILLING CODE: 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0954]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments; extension of comment period.

SUMMARY: The Economic Growth and Regulatory Paperwork Reduction Act of 1996 directs the Board and the Department of Housing and Urban Development (HUD), where possible, to simplify and improve consumer disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and to provide a single format satisfying the requirements of those laws. If legislation is necessary to accomplish these goals, the agencies are to submit legislative recommendations to the Congress. In December 1996, the agencies published for comment an advance notice of proposed rulemaking. After consideration of the comments and further review, the Board determined that regulatory changes alone would be inadequate to achieve the goals of the Congress and that legislative changes are necessary to harmonize TILA and RESPA. In April 1997, the Board published a notice to invite additional public comments on possible legislative action. In the next few months, the Board and HUD will report to the Congress on potential legislative changes. In order to obtain additional comments from individual consumers, the Board has reopened and extended the public comment period.

DATES: Comments must be submitted on or before March 9, 1998.

ADDRESSES: Comments should refer to Docket No. R–0954 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael L. Hentrel, Natalie E. Taylor, Staff Attorneys, or James A. Michaels, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Section 2101 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) directs the Board and HUD to simplify and improve the disclosures given in a home mortgage transaction subject to TILA and RESPA, and to create a single disclosure that will satisfy the requirements of both statutes, if possible. If legislation is necessary to develop a single simplified disclosure, the Board and HUD are directed to submit legislative recommendations to the Congress. The statutes impose numerous requirements and serve various purposes. TILA seeks to promote the informed use of consumer credit by requiring standardized disclosures about credit terms and costs. The disclosures are intended to focus consumers' attention on certain aspects of their transaction and to assist them in comparison shopping. TILA establishes additional disclosure requirements for home-secured loans, and in some cases permits consumers to rescind such loans. RESPA contains both disclosure and price-related provisions. It requires that certain disclosures be given at various points in most mortgage transactions to ensure that consumers receive timely and useful information about the costs associated with the transaction. It also prohibits kickbacks and referral fees among settlement service providers.

On December 31, 1996 (61 FR 69055), the Board and HUD jointly published for comment an advance notice of proposed rulemaking on the issue of simplifying and combining the disclosure requirements of RESPA and TILA. The Board and HUD received more than 80 comment letters, primarily from creditors and their representatives. After reviewing the comments, and upon further analysis in consultation with HUD, the Board decided not to propose any changes to Regulation Z. The Board determined that harmonizing TILA and RESPA to any significant degree required changes that could only come about through legislative action. As a result, the Board published a notice inviting additional public comment on possible legislative action on April 2, 1997 (62 FR 15624). The Board and HUD received more than 160 comment letters from consumers and industry representatives.

The Board is extending the comment period until March 9, 1998, in order to obtain views from consumers on matters such as the timing, content, and reliability of disclosures; the Board will do so by inviting certain first time homebuyers and previous home purchasers to participate in focus groups. The comment period is being extended primarily for the purpose of conducting these focus group interviews. Other members of the public may submit comments during this period, but they are encouraged to submit them as soon as possible. This extension will not delay the Board in providing its report to the Congress.

By order of the Secretary of the Board, acting pursuant to delegated authority for Board of Governors of the Federal Reserve System, January 30, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–2899 Filed 2–5–98; 8:45 am]

BILLING CODE 6210–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Proposed Rulemaking Permitting Future-Style Margining of Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission has proposed the

repeal of Commission Regulation 33.4(a)(2) which requires the full upfront payment of commodity option premiums. The proposed repeal was initially published for comment on December 19, 1997 (62 FR 66569) with comments on the proposal due by February 2, 1998. The effect of the repeal would be to permit the futures-style margining of commodity options traded on regulated futures exchanges and is discussed in the initial notice of proposed rulemaking. In order to give those persons affected by the proposed repeal sufficient time to fully assess its ramifications, the Commission has determined to extend the comment period on this proposal for an additional 30 days. The extended deadline for comments on this proposed rulemaing is March 4, 1998.

Any person interested in submitting written data, views, or arguments on the proposal should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments must be received on or before March 4, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5495.

Issued in Washington, D.C., on this 2nd day of February, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–3073 Filed 2–5–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Supplementary proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing further changes to its proposed rules amending the regulations governing the royalty valuation of crude oil produced from Federal leases. MMS is seeking comments on this proposed rulemaking that includes changes resulting from comments received on oil valuation proposals published in the **Federal Register** and at several hearings and workshops.

DATES: Submit comments on or before March 23, 1998.

ADDRESSES: Send your written comments to David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; or e-Mail David__Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3385, or e-Mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are David A. Hubbard, Charles Brook, and Deborah Gibbs Tschudy of the Royalty Management Program (RMP) and Peter Schaumberg and Geoff Heath of the Office of the Solicitor in Washington, D.C.

MMS is specifying a deadline for comments that is less than the 60 days recommended by Executive Order No. 12866. MMS believes that a 45-day comment period is appropriate in this instance, because it previously extended and reopened the comment periods for several earlier proposed versions of this rule. MMS also held numerous workshops across the country to obtain public input on this proposed rulemaking. MMS is also planning to hold several hearings during the 45-day comment period to give interested parties the opportunity to fully discuss and comment on this supplementary proposed rule. MMS will publish specific dates and locations for the hearings in the **Federal Register**. MMS will consider comments filed beyond the deadline to the extent practicable.

I. Background

MMS first published notice of its intent to amend the current Federal oil valuation regulations, which appear in 30 CFR part 206, on December 20, 1995 (60 FR 65610). The goal of this rulemaking effort is to decrease reliance on oil posted prices, develop valuation rules that better reflect market value, and add more certainty to valuing oil produced from Federal lands.

The proposed amendments are brought about by changes in the domestic petroleum market. Oil postings traditionally represented prices oil purchasers were willing to pay for particular crude oils in specific areas. Because they often provided the basis for prices in arm's-length transactions, MMS generally considered them representative of market value. Consequently, MMS heavily relied on them for royalty valuation. However, recent studies commissioned by States and an analysis performed for MMS by an interagency task force (''Final Interagency Report on the Valuation of Oil Produced from Federal Leases in California,'' May 16, 1996) concluded that the postings used by most companies are considerably less than the true market value of oil. These studies also indicated that integrated oil companies rarely sell crude oil at the lease. Instead, they rely on various exchange arrangements, which do not always reference a price, to transfer oil to refineries. Even where exchange agreements reference a price, the transaction's purpose is to exchange oil for oil rather than money for oil; therefore, MMS cannot rely on the price stated to be reflective of actual market value.

Based on these studies and subsequent MMS audits and investigations, MMS believes that the current benchmarks used to value Federal oil not sold at arm's length, which rely heavily on posted prices, no longer result in reflecting the market value of the oil.

On January 24, 1997, MMS published its initial notice of proposed rulemaking to amend the current Federal crude oil valuation regulations (62 FR 3742). The comment period on this proposal ended March 25, 1997, but was twice extended to April 28, 1997 (62 FR 7189), and May 28, 1997 (62 FR 19966). We also held public meetings in Lakewood, Colorado, on April 15, 1997, and Houston, Texas, on April 17, 1997, to hear comments on the proposal.

In response to the variety of comments received on the initial proposal, particularly with regard to the limitations on using arm's-length gross proceeds as value, we published a supplementary proposed rulemaking on July 3, 1997 (62 FR 36030). The comment period on this proposal closed August 4, 1997.

Because comments on both proposals were substantial, we reopened the public comment period on September 22, 1997 (62 FR 49460), and requested comments on alternatives suggested by commenters before proceeding with the rulemaking. The initial comment period for this request closed October 22, 1997, and was extended to November 5, 1997

(62 FR 55198). We held public workshops to discuss valuation alternatives in Lakewood, Colorado, on September 30 and October 1, 1997 (62 FR 50544); Houston, Texas, on October 7, 8, and 14, 1997 (62 FR 50544); Bakersfield, California, on October 16, 1997 (62 FR 52518); Casper, Wyoming, on October 16, 1997 (62 FR 52518); Roswell, New Mexico, on October 21, 1997 (62 FR 52518); and Washington, D.C. on October 27, 1997 (62 FR 55198).

After reviewing over 2,600 pages of comments along with records of the workshops and public meetings, MMS has decided to issue another supplementary proposed rule. This rule maintains the concept of ''index'' pricing but allows for the use of indicies closer to the lease and recognizes geographical differences in the marketplace, all points raised by commenters in response to our earlier proposed rulemakings. This rule is intended as another of the processes to develop a rule that meets the needs of the varied constituents.

However, because we are still in the deliberative process, in this rulemaking, MMS is not responding to the individual comments made on the five alternatives or on the previous proposals. Once MMS decides on a framework for a final rule, we intend to thoroughly respond to all comments received. For this reason, it is not necessary for commenters to resubmit earlier comments.

II. Summary of Public Comments

This further supplementary proposed rulemaking results from the comments received in response to the January 24, July 3, and September 22, 1997, notices and from comments made at the public workshops. We summarized the comments received on the January 24 and July 3, 1997, proposals in the September 22, 1997, notice. We summarize the comments received on the September 22, 1997, notice here.

Because of the numerous comments from both States and industry questioning the use of New York Mercantile Exchange (NYMEX) prices as the basis for valuing crude oil not sold under arm's-length contracts, we posed five alternatives, suggested by the commenters, in the September 22, 1997, notice to value ''non-arm's-length'' oil: (1) A value based on prices received under bid-out or tendering programs; (2) a value determined from benchmarks using arm's-length transactions, royalty-in-kind (RIK) sales, or a netback method; (3) a value based on geographic indexing using MMS's own system data, but excluding posted prices; (4) a value based on index (NYMEX and ANS) prices but using fixed-rate differentials; and (5) a value using published spot prices instead of NYMEX prices. With regard to Alternatives 1, 2, and 3, we also asked whether the Rocky Mountain Area should have separate and specific valuation standards.

We received 28 written comments from independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, a government oversight group, and a royalty owner. Sixty individuals provided commentary at the public workshops. The summary of comments follows.

Alternative 1—Bid-Out or Tendering Program

Industry and some States supported tendering as a viable alternative to determine value at the lease. They assert that the prices received under tendering transactions were evidence of market value at or near the lease. However, industry cautioned that tendering would not be applicable in every situation (it would be too expensive for some companies to develop and administer) and should be only used as one of several alternatives available for valuation. In fact, two commenters noted that tender-based valuation was not feasible in California because no one is presently engaged in tendering programs in that State. To be acceptable for valuing the lessee's non-arm's-length production, one commenter recommended that the minimum tendered volume should be MMS's royalty share plus 2 percent, or if transported by a truck or tank car, a volume equal to a full load. Another commenter recommended 10 to 20 percent as the minimum volume, with a minimum of three bids.

Alternative 2—Benchmarks

Industry and some States generally supported some form of benchmark system based on actual arm's-length or affiliate resale prices, RIK prices, or a netback method using an index price to value non-arm's-length oil. (Nonetheless, many commenters remained opposed to NYMEX- and ANS-based pricing.) Industry, however, advocated that lessees be permitted to select the valuation method best suited to their situation; in other words, they wanted the benchmarks to be a menu, rather than a hierarchy. States objected to this selection concept. Industry also urged MMS to abandon the requirement that royalty value is the greater of the lessee's gross proceeds or the benchmark value.

One State recommended separate valuation standards for lessees with affiliated refiners and those without. That State also recommended, for the Rocky Mountain region only, that lessees with affiliated refiners determine value by benchmarks using tendered prices, lease-based comparable sales, and netback from spot price. It further recommended, for all lessees without affiliated refiners who sell their oil non-arm's-length, that value be based on the oil's resale price. Industry objected to this affiliated-refiners distinction because they stated not all integrated producers sell or transfer their oil production to their affiliated refiner.

For netback valuation, industry urged MMS to recognize all costs associated with midstream marketing as allowable deductions from the index or resale price. However, one State commenter argued that industry has failed to demonstrate any entitlement to a marketing deduction as a matter of law or fact, citing, for example, that midstream marketing costs are already factored into transportation tariffs and location differentials.

Two commenters representing State of California interests objected to any benchmark valuation scheme for that State. They argued that the California crude oil market is not competitive. Thus, they believed that any non-arm's-length valuation scheme based on arm's-length prices would not reflect true market value. They maintained that ANS prices are the only viable method of valuing crude oil in California.

Alternative 3—Geographic Indexing

Most commenters believed the proposed geographic indexing method would be unworkable. They mainly objected to the time difference between the production month and publication of the index price. They argued that the published indices always would be out of date and require unnecessary adjustments to prior reporting months.

Alternative 4—Differentials

In concert with their objections to basing value on index (NYMEX and ANS) prices, industry commenters opposed using any fixed (or other) differentials without deductions for midstream marketing activities. Specifically for California, two commenters representing State interests urged MMS to use the gravity factor in the Four Corners and All America Pipeline tariffs to adjust for quality differences between ANS and California crude oils. For location differentials, they reiterated their position that the only relevant information is from ''in/out'' exchanges. As an option to determining separate location differentials for the various California

aggregation points/market center pairs, they proposed fixed-rate differentials for given geographic zones.

Alternative 5—Spot Prices

Comments on the proposed spot price methodology were mixed. Some commenters thought it was a workable approach, indicating that the net result would be the same as starting with a NYMEX price and adjusting back to the lease. A few commenters noted that spot prices are published only for a limited number of domestic crude oils, and no reliable spot prices are published for the Rocky Mountain Area. One commenter questioned the accuracy of the reported prices. Industry commenters remained concerned with the disallowance of marketing costs in using spot prices, but in general, preferred spot prices to NYMEX.

Rocky Mountain Area

There was general consensus among commenters that the Rocky Mountain Area exhibited particular oil marketing characteristics that would justify different royalty valuation standards. Production is controlled by relatively few companies in the Rocky Mountain Area. The number of buyers is also more limited than in the Texas, Gulf Coast, or Mid-continent areas and there are limited third party shippers and less competition for transportation services in this area. Finally, there is less spot market activity and trading in this area as a result of this control over production and refining and because crude oil production is smaller and more diffuse than in the Gulf Coast and Permian Basin areas. Some commenters, both industry and State, supported the notion of separate valuation standards for the region. Others, however, disagreed with any regional separation, preferring instead a single, nationwide, lease-based valuation scheme or menu of benchmarks.

III. Section-by-Section Analysis

The content of many of the sections has not changed significantly from the January 1997 notice of proposed rulemaking, but we rewrote the proposed rule to better reflect plain English. We also added and renumbered sections and further reorganized the rule for readability. This preamble focuses primarily on those sections whose content we significantly changed. While the preambles of the January 1997 proposed rule and the July 1997 supplementary proposed rule discuss earlier changes, this preamble highlights changes that have been made as a result of comments received throughout this rulemaking. Note that the renumbering and reorganization resulted in the following modifications to the previous proposals:

Section	Modification
§§ 206.100 and 206.101	Revised.
§ 206.102	Revised and redesignated as §§ 206.102, 206.103, 206.104, 206.105, 206.106, 206.107, and 206.108.
§§ 206.103 and 206.104	Redesignated as §§ 206.122 and 206.109, respectively.
§ 206.105	Revised and redesignated as §§ 206.110, 206.111, 206.116, 206.117, 206.119, 206.120, and 206.121.
§ 206.106	Revised and redesignated as § 206.123.
New §§ 206.112, 206.113, 206.114, 206.115, and 206.118.	Added.

In addition, all sections of the existing rule not previously proposed to be revised were rewritten in plain English so the entire rule would read consistently.

Before proceeding with the section-by-section analysis, it is necessary to explain the conceptual framework of the proposed rule. When crude oil is produced, it is either sold at arm's length or is refined without ever being sold at arm's length. If crude oil is exchanged for other crude oil at arm's length, the oil received in the exchange is either sold at arm's length or is refined without ever being sold at arm's length. Under this proposed rule, oil that ultimately is sold at arm's length before refining generally will be valued based on the gross proceeds accruing to the seller under the arm's-length sale. (The few exceptions reflect particular circumstances in which MMS believes the arm's-length sale does not or may not reliably reflect the real value.) Similarly, if oil is exchanged at arm's length and the oil received in exchange is ultimately sold at arm's length, the value of the oil produced will be based on the arm's-length sale of the oil received in exchange, with appropriate adjustments. If oil (or oil received in exchange) is refined without being sold at arm's length, then the value will be based on appropriate index prices or other methods, as explained below.

These principles apply regardless of whether oil is sold or transferred to one or more affiliates or other persons in non-arm's-length transactions before the arm's-length sale, and regardless of the number of those non-arm's-length transactions. They also apply regardless of how many arm's-length exchanges have occurred before an arm's-length sale. Lessees and producers may structure their business arrangements however they wish, but MMS would look to the ultimate arm's-length disposition in the open market as the best measure of value. Similarly, if oil is refined without being sold at arm's length, MMS believes that the valuation methods prescribed in this proposed rule are the best measures of value regardless of internal, inter-affiliate, or other non-arm's-length transfers.

Another important concept of the proposed rule is that MMS is proposing separate valuation procedures for California/Alaska, the Rocky Mountain Area, and the rest of the country. In California and Alaska, if oil is not sold under an arm's-length contract, value would be based on ANS spot prices, adjusted for location and quality. MMS chose this indicator because it believes, as the interagency task force concluded, that ANS is the best measure of market value in that area when oil is not sold at arm's length. In the Rocky Mountain Area, if oil is not sold under an arm's-length contract, market value is more difficult to measure because of the isolated nature of the Area from the major oil market centers. Therefore, MMS is proposing to accept values established by a company-administered tendering program as the first benchmark. In cases where tendering does not happen or it does not meet our requirements, the second benchmark would be a weighted-average of arm's-length sales and purchases exceeding 50 percent of the lessee's and its affiliate's production in the field or area. NYMEX with location and quality adjustments would be used as the third benchmark, because no acceptable published spot price exists in the Rocky Mountain

Area. For other areas, value would be based on the nearest spot price, adjusted for quality and location. MMS believes that because the spot market is so active in areas other than the Rocky Mountain Area, it is the best indicator of value. MMS chose spot prices over NYMEX because studies indicated that when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Further, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location.

Proposed Section 206.100 What is the Purpose of this Subpart?

This section includes the content of the existing section except for minor wording changes to improve clarity. We have added some further language clarifying the respective roles of lessees and designees. (Those terms are defined in the proposed § 206.101, and those definitions follow the definitions contained in section 3 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1702, as amended by section 2 of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104–185, 110 Stat. 1700.)

Specifically, if you are a designee and you or your affiliate dispose of production on behalf of a lessee, references to ''you'' and ''your'' in the proposed rule refer to you or your affiliate. In this event, you must report and pay royalty by applying the rule to your and your affiliate's disposition of the lessee's oil. If you are a designee and you report and pay royalties for a lessee but do not dispose of the lessee's production, the references to ''you'' and ''your'' in the proposed rule refer to the lessee. In that case, you as a designee would have to determine royalty value and report and pay royalty by applying the rule to the lessee's disposition of its oil. Some examples will illustrate the principle.

Assume that the designee is the unit operator, and that the operator sells all of the production of the respective working interest owners on their behalf and is the designee for each of them. For each of those working interest owners, the operator, as designee, would report and pay royalties on the basis of the operator's disposition of the production. For example, if the operator transferred the oil to its affiliate, who then resold the oil at arm's length, the royalty value would be the gross proceeds accruing to the designee's affiliate in the arm's-length resale under proposed § 206.102, as explained further below.

Alternatively, assume the operator is the designee but a lessee disposes of its own production. Assume the lessee transfers its oil to an affiliate, who then resells the oil at arm's length. In this case, the operator would have to obtain the information from the lessee, and report and pay royalties on the basis of the gross proceeds accruing to the lessee's affiliate in the arm's-length resale under proposed § 206.102.

In some cases, the designee is the purchaser of the oil. Assume the operator disposes of the lessee's oil and that the operator is not affiliated with the designee-purchaser. Because the lessee's sale to the designee is an arm's-length transaction, then under § 206.102 the designee would report and pay royalty on the total consideration (the gross proceeds) it paid to the lessee.

Proposed Section 206.101 Definitions

The definitions section remains largely the same as in the January 1997 notice of proposed rulemaking. However, MMS made several additions and clarifications consistent with changes in this further supplementary proposed rule.

Specifically, the July 3, 1997, supplementary proposed rule (62 FR 36030) added a definition of *non-competitive crude oil call* to help describe circumstances under which crude oil sales proceeds could be used for royalty valuation. We incorporated a simplified version of that definition in this further supplementary proposed rule, as well as a new definition of *competitive crude oil call* to assist in understanding the differences between these two contract terms.

We modified the definition of *arm's-length contract* to remove the criteria for determining affiliation. Instead, these criteria would be included in the new definition of *affiliate* discussed below.

We also modified the definition of *exchange agreement* to delete the statement that exchange agreements do not include agreements whose principal purpose is transportation. MMS believes that transportation exchanges, while having different purposes than other types of exchanges, properly should be included under the generic definition of exchange agreements.

We also modified the definition of *gross proceeds* to clarify that they would include payments made to reduce or buy down the purchase price of oil to be produced later. The concept that such payments are part of gross proceeds was included in the January 1997 proposed rulemaking at § 206.102(a)(5). Moving this provision directly to the gross proceeds definition not only further clarifies the components of gross proceeds, but also makes the structure of this further supplementary proposed rule more logical.

Also, since this further supplementary proposed rule would apply spot prices for crude oil other than Alaska North Slope oil as a valuation basis in some cases, we changed the definitions of *index pricing* and *MMS-approved publication* to include other spot prices.

Finally, we added four new definitions of terms used in this further supplementary proposed rule. They are *affiliate, prompt month, Rocky Mountain Area,* and *tendering program.*

MMS requests comments on the *Rocky Mountain Area* definition. Specifically, are there other States or regions that should be included in this definition and, conversely, are there States or regions that should be deleted? For example, although some participants in MMS's workshops believed the entire State of New Mexico belongs outside the Rocky Mountain Area for purposes of applying this rule, others believed that oil marketing in the northwest portion of New Mexico is similar to that in the other Rocky Mountain States. Some commenters suggested that northwest New Mexico (not including the Permian Basin) more appropriately should be included in the Rocky Mountain Area. MMS has excluded New Mexico from the proposed definition but would like comments on this issue.

MMS also requests any other comments you may have on these proposed new and revised definitions.

Proposed Section 206.102 How Do I Calculate Royalty Value for Oil That I or My Affiliate Sell Under an Arm's-Length Contract?

In an effort to improve the organization and readability of the proposed rule, § 206.102 as written in the January 1997 proposed rule and the July 1997 supplementary proposed rule would be revised and reorganized. We propose to revise § 206.102 to specifically address valuation of oil ultimately sold under arm's-length contracts. That sale may occur in the first instance, or may follow one or more non-arm's-length transfers or sales of the oil or one or more arm's-length exchanges.

Paragraph (a) would state that value is the gross proceeds accruing to you or your affiliate under an arm's-length contract, less applicable allowances. This also includes oil you sell in exercising a competitive crude oil call. Similarly, if you sell or transfer your Federal oil production to some other person at less than arm's length, and

that person or its affiliate then sells the oil at arm's length, royalty value would be the other person's (or its affiliate's) gross proceeds under the arm's-length contract. For example, a lessee might sell its Federal oil production to a person who is not an ''affiliate'' as defined, but with whom its relationship is not one of ''opposing economic interests'' and therefore is not at arm's length. An illustrative example would be a number of working interest owners in a large field forming a cooperative venture that purchases all of the working interest owner's production and resells the combined volumes to a purchaser at arm's-length. The sale proceeds then would be distributed proportionately to those persons who contributed volumes. *Xeno, Inc.*, 134 IBLA 172 (1995), involved a similar situation in the context of a gas field. If no one of the working interest owners owned 10 percent or more of the new entity, the new entity would not be an ''affiliate'' of any of them. Nevertheless, the relationship between the new entity and the respective working interest owners would not be at arm's length. In this instance, it would be appropriate to value the production based on the arm's-length sale price the cooperative venture received for the oil.

In all these circumstances you would be required to value the production based on the gross proceeds accruing to you, your affiliate, or other person to whom you transferred the oil when the oil ultimately was sold at arm's length.

Proposed paragraph (b) would clarify how to value your oil when you sell or transfer it to your affiliate or to another person, and your affiliate, the other person, or an affiliate of either of them sells the oil at arm's-length under multiple arm's-length contracts. In this case, value would be the volume-weighted average of the values established under § 206.102 for each contract.

However, paragraph (c), which replaces paragraph (a)(1) from the January 1997 proposed rule, specifies several exceptions to the use of arm's-length gross proceeds. As stated in the July 1997 supplementary proposed rule, it would also require you to apply the exceptions to each of your contracts individually. For example, you may have multiple arm's-length and non-arm's-length exchange agreements involving your Federal oil production. Depending on its ultimate disposition under each exchange agreement, you might value some of the production under § 206.102 and some under § 206.103.

Proposed paragraphs (c)(1) and (c)(2) would replace paragraphs (a)(2) and (a)(3) from the January 1997 proposed rule. Although the wording changes slightly, the content remains the same. Note, however, that in the supplementary proposed rule of July 3, 1997, a proposed revision under paragraph (a)(4)(ii) said that where an arm's-length contract price does not represent market value because an overall balance between volumes bought and sold is maintained between the buyer and seller, royalty value would be calculated as if the sale were not arm's length. MMS decided to remove that language as a specific, separate provision. Rather, in considering whether an arm's-length contract reflects your or your affiliates' total consideration or market value (proposed paragraphs (c)(1) and (c)(2)), MMS also would examine whether the buyer and seller maintain an overall balance between volumes they bought from and sold to each other. Under these paragraphs, if an overall balance agreement is found to exist, you would be required to value your production under § 206.103 or the total consideration received, whichever is greater.

In the supplementary proposed rule of July 3, 1997, MMS proposed to modify paragraph (a)(4) of the January 1997 proposed rule regarding exchange agreements and crude oil calls. It also proposed a new paragraph (a)(6) regarding exchange agreements. See the preamble to the supplementary proposed rule at 62 FR 36031 for a complete explanation of the changes proposed. In this further supplementary proposed rule, we have further modified the exchange agreement language at paragraphs (a)(4)(i) and (a)(6) of the supplementary proposed rule and combined it in paragraph (c)(3). Revised paragraph (c)(3) would require you to use § 206.103 to value oil you dispose of under an exchange agreement. But if you enter into one or more arm's-length exchange agreements, and after these exchanges you or your affiliate dispose of the oil in an arm's-length sale, you would value the oil under paragraph (a) on the basis of the gross proceeds received under the arm's-length contract for the sale of the oil received in exchange. You would adjust the value determined under paragraph (a) for location or quality differentials or any other adjustments you receive or pay under the arm's-length exchange agreement(s). However, if MMS finds that any such differentials or adjustments aren't reasonable, it could require you to value the oil under § 206.103.

This concept is similar to paragraph (6)(i) of the July 1997 supplementary proposed rule, but with three differences. First, the July language referred to exchange agreements with a person not affiliated with you. The revision proposed here would expand coverage to arm's-length exchange agreements. This means that not only must you be unaffiliated with your exchange partner, but there must be opposing economic interest regarding the exchange agreement. MMS believes this would limit instances where inappropriate or unreasonable location, quality, or other adjustments would be applied. MMS proposes to limit this provision to arm's-length exchanges because it believes transportation, location, and quality differentials stated in non-arm's-length exchange agreements are not reliable.

Second, MMS proposes to clarify that the same valuation procedure would apply if there is more than one arm's-length exchange. For example, if you enter into two sequential arm's-length exchanges for your Federal oil production and then you or an affiliate sell the reacquired oil at arm's length, you would value your production under paragraph (a). MMS believes that as long as the integrity of the differentials and adjustments is maintained, there is no reason not to look to the ultimate arm's-length sale proceeds.

Third, under paragraph (a)(6)(i) of the supplementary proposed rule, if you disposed of your oil under an exchange agreement with a non-affiliate and after the exchange you sold the acquired oil at arm's length, you could have elected to value your oil either at your gross proceeds or under index pricing. MMS proposes to eliminate this option. We believe that the actual arm's-length disposition should govern valuation. That is, the provisions of §§ 206.102 or 206.103 should be applied according to your actual circumstances. This change also leads to the deletion of the previously-proposed paragraph (a)(6)(iii), which related to the election we now propose to eliminate.

As a result of the changes discussed above, MMS also proposes to eliminate paragraph (a)(6)(ii) of the July 1997 supplementary proposed rule. This paragraph would have required you to use index pricing if you either transferred your oil to an affiliate before the exchange occurred, transferred the oil you received in the exchange to an affiliate, or entered into a second exchange for the oil you received back under the first exchange. We have already discussed the permissibility of multiple exchanges under this further supplementary proposed rule. Our reasoning for eliminating the rest of paragraph (a)(6)(ii) of the July 1997

supplementary proposed rule is that if you transfer your production to an affiliate and the affiliate then enters into an arm's-length exchange and sells the oil received in the exchange at arm's length, the arm's-length proceeds should be the measure of value. Likewise, if you enter an arm's-length exchange but then transfer the oil received to an affiliate who resells the oil at arm's length, the arm's-length proceeds should be the measure of value. For any exchanges where the oil received in return is not resold but instead is refined, index prices would apply as discussed under § 206.103.

Proposed paragraph (c)(4) would remain essentially the same as paragraph (a)(4)(iii) of the supplementary proposed rule. It states that you must use § 206.103 to value oil you dispose of in exercising a non-competitive crude oil call. In response to the supplementary proposed rule and in MMS's public workshops, commenters asserted that in many instances producers negotiate competitive prices even if a non-competitive call provision exists and a call on production is exercised. However, we continue to believe that if your purchaser exercises a non-competitive call, you could not effectively demonstrate that the price received is competitive and that value should be determined using index pricing.

Paragraph (a)(5) of the January 1997 proposed rule dealt with inclusion in gross proceeds of payments made to reduce or buy down the price of oil to be produced in later periods. We removed this paragraph in this further supplementary proposed rulemaking but added the concept within the definition of *gross proceeds* as discussed above.

Currently-proposed § 206.102 (d), *What else must I do if I value oil under paragraph (a)?*, has the same content as § 206.102 (b) of the January 1997 proposed rule. A minor difference is a clarification that you must be able to demonstrate that an exchange agreement, as well as a contract, is arm's length. Also, since this further supplementary proposed rule would require arm's-length gross proceeds as royalty value regardless of whether the lessee or an affiliate or another arm's-length purchaser is the person who ultimately sells at arm's length, all of these persons come within the term ''seller.''

Proposed Section 206.103 How Do I Value Oil That I Cannot Value Under § 206.102?

This section would replace § 206.102(c) of the January 1997 proposed rule. It deals specifically with valuation of oil you cannot value under § 206.102 because the oil is not ultimately sold at arm's length or because it is otherwise excepted under § 206.102.

One change from the January 24, 1997, proposal would apply where value is based on index prices. In MMS' initial proposal, where either NYMEX or spot prices were applied in valuation, the prices for the month following the lease production month were used. This was meant to reflect the fact that NYMEX futures prices for the prompt month, as well as spot prices for the next month, are determined *during* the month of production. MMS believed this best reflected market value at the time of production. However, various commenters asserted that, for application of spot or futures prices, the lease production month should coincide with the spot or futures *delivery* month. This would effectively match production to index prices for deliveries in the same month. Although we believe the effects of such a change over time would be minimal, we now propose to change the timing of application of index prices so that the lease production month and the spot or futures delivery month would coincide.

Also, § 206.102(c)(1) of the January 1997 proposed rule would have permitted you an option if you first transferred your oil production to an affiliate and that affiliate or another affiliate disposed of the oil under an arm's-length contract. The option was to value your oil at either the gross proceeds accruing to your affiliate under its arm's-length contract or the appropriate index price. But this option is not available in this further supplementary proposed rule. MMS believes that where arm's-length transactions satisfying the provisions of proposed § 206.102 occur, royalty value should be the arm's-length gross proceeds. Otherwise, the provisions of this proposed § 206.103 should apply directly. This process would remove some uncertainty among lessees about how and when to apply this section. More importantly, MMS believes this process best reflects the actual value of the oil.

Another change from January proposed rule is an additional geographic breakdown for valuation purposes. The original proposed rule included separate valuation procedures for California/Alaska and the rest of the country. But based on the various written comments MMS received in response to its January, July, and September 1997 rulemaking notices, and comments made at the various valuation workshops, it became apparent that oil marketing and valuation in the Rocky Mountain Area is significantly different from other areas.

Also, the only published spot price in the Rocky Mountain Area is at Guernsey, Wyoming. Commenters consistently maintained that the spot price there is thinly traded. The combination of geographical remoteness from midcontinent markets, unique marketing situations, and the lack of a meaningful published spot price led MMS to add the Rocky Mountain Area as a third royalty valuation area. MMS requests comments on the revised geographical breakdown for valuation purposes, as well as the composition of the *Rocky Mountain Area.*

Proposed § 206.103(a) would apply to production from leases in California or Alaska. It would replace § 206.102(c)(2)(ii) of the January 1997 proposed rule. The only differences in this further supplementary proposed rule are a more direct explanation of how to calculate the spot prices and a clarification that the applicable spot prices are those published during the month preceding the production month. To calculate the daily mean spot prices, you would average the published daily high and low prices for the applicable month, only using the days and corresponding prices for which spot prices are published. You would not include weekends, holidays, or any other days when spot prices are not published. For example, assume the month preceding the production month has 31 days, including 8 weekend days and a holiday, and the publication publishes spot prices for all other days. You would average together the published high and low spot prices for each of the 22 remaining days.

Proposed § 206.103(b) would apply to production from leases in the Rocky Mountain Area, a defined term. As discussed above, production in the Rocky Mountain Area is controlled by relatively few companies and the number of buyers is more limited than in the Texas, Gulf Coast, or Mid-contintent areas. As a result, there is less spot market activity and trading in this area due to the control over production and refining. For these reasons, we derived the following valuation hierarchy for Rocky Mountain Area:

(1) If you have an MMS-approved tendering program (a defined term), the value of production from leases in the area the tendering program covers would be the highest price bid for tendered volumes. Under tendering program you would have to offer and sell at least 33⅓ percent of your production from both Federal and non-Federal leases in that area. You also would have to receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

To ensure receipt of market value under tendering programs, MMS proposes the several qualifications listed above. First, royalty value must be the highest price bid rather than some other individual or average value. Second, you must offer and sell at least 33⅓ percent of your production from both Federal and non-Federal leases in that area. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could ''game'' the system for Federal royalty or State tax payment purposes. MMS chose the 33⅓ percent figure because it exceeds the typical combined Federal royalty rate and effective composite State tax and royalty rates for onshore oil leases by roughly 10 percent. Likewise, the tendering program would be required to include non-Federal lease production volumes in the 33⅓ percent determination to ensure that the program isn't aimed at limiting Federal royalty value.

Third, to ensure receipt of competitive bids, your tendering program must result in at least three bids from bidders who do not have their own tendering programs covering some or all of the same area. MMS believes that requiring a minimum number of bidders is needed to ensure receipt of market value. Further, MMS is concerned about the possibility of cross-bidding between companies at below-market prices, which could otherwise satisfy the minimum number of bidders requirement. That is why we added the stipulation that bids must come from bidders who do not also have their own tendering programs in the area.

MMS requests comments on use of tendering programs in general in establishing royalty value. Also, please provide comments on the proposed specific qualifications. Should we limit qualified bids to those who do not have tendering programs *anywhere,* and not just in the same area? Should a tendering program be a first or second benchmark? Please provide any related comments you may have.

(2) Under the second criterion, which would apply only if you could not use the first criterion, value would be the volume-weighted average gross proceeds accruing to the seller under your or your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

MMS proposes this method as the next alternative if a qualified tendering program does not exist. It is an effort to establish value based on actual transactions by the lessee or its affiliate(s). We received a number of comments during the public workshops that MMS should look not only to sales by the lessee, but also purchases a lessee or its affiliates make in the field or area. Just as for the tendering program, MMS believes a floor of the lessee's and its affiliates' production should be set to prevent any ''gaming.'' The 50 percent minimum figure is not necessarily a higher standard than the 33⅓ percent floor associated with the tendering program, because it applies to the lessee's and its affiliates' sales *and* purchases in the field or area. For example, Company A produces 10,000 barrels of crude oil in a given field during the production month. Company A sells 1,000 barrels under an arm's-length contract. Company A also has a refining affiliate, Company B, that purchases the remaining 9,000 barrels of Company A's production and 5,000 barrels of oil under arm's-length purchase contracts with other producers in the same field. Together the arm's-length sales by Company A and the arm's-length purchases by Company B are 6,000 barrels, or 60 percent of the lessee's and its affiliates' production in the field that month. The volume-weighted arm's-length gross proceeds accruing to Company A and paid by Company B for these 6,000 barrels represents royalty value for the 9,000 barrels of Company A's Federal lease production in the field that cannot be valued under § 206.102.

MMS proposes using the unadjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's or its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We believe that production in the same field or area generally will be similar in quality. Further, given that these sales and purchases must be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable contracts.

(3) If you could not apply either of the first two criteria, the value would be the average of the daily NYMEX futures settle prices at Cushing, Oklahoma, for the light sweet crude oil contract for the prompt month that is in effect on the first day of the month preceding the production month. You would use only the days and corresponding NYMEX prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.105(c) of this subpart.

This paragraph essentially duplicates § 206.102(c)(2)(i) of the January 1997 proposed rule. The only real difference is that we correlated the NYMEX futures delivery month with the production month as discussed earlier. As described for the spot price calculations for California and Alaska, you would use only the days for which NYMEX futures prices are published. MMS proposes to make this the third method, to be used only if the first two do not apply, because of distances between Rocky Mountain Area locations and Cushing, Oklahoma, and the additional difficulties in deriving location/quality differentials.

(4) If you should demonstrate to MMS' satisfaction that paragraphs (b)(1) through (b)(3) result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director could establish an alternative valuation method.

MMS proposes this method as the last alternative, to be used only in very limited and highly unusual circumstances. We also propose that there should be very few such alternative valuation methods and each one should be subject to careful review.

Proposed § 206.103(c) would apply to production from leases not located in California, Alaska, or the Rocky Mountain Area. MMS proposes to modify § 206.102(c)(2)(i) of the January 1997 proposed rule that applied to locations other than California and Alaska. That paragraph would have required you to value your oil at the average daily NYMEX futures settle prices. This further supplementary proposed rule would state that value is the average of the daily mean spot prices:

(1) For the market center nearest your lease where spot prices are published in an MMS-approved publication;

(2) For the crude oil most similar in quality to your oil (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils. Their quality specifications differ significantly); and

(3) For deliveries during the production month.

You would calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. You would also use only the days and corresponding spot prices for which such prices are published. You would be required to adjust the value for applicable location and quality differentials, and you would be permitted to adjust it for transportation costs, under §§ 206.112 and 206.113 of this subpart.

Another difference from the January 1997 proposed rule is the application of spot, rather than NYMEX, prices. MMS made this change for several reasons. First, we believe that when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location.

MMS did not propose any of the alternatives here that it proposes for the Rocky Mountain Area for oil that cannot be valued under proposed § 206.102. That is because, unlike the Rocky Mountain Area, there are meaningful published spot prices applicable to production in the other areas (Cushing, Oklahoma; St. James, Louisiana; Empire, Louisiana; Midland, Texas). With the exception of the Rocky Mountain Area, in the United States, spot and spot-related prices drive the manner in which crude oil is bought and traded. Spot prices play a significant role in crude oil marketing in terms of the basis upon which deals are negotiated and priced and are readily available to lessees via price reporting services. We believe that spot prices are the best indicator of value for production from leases not located in California, Alaska, or the Rocky Mountain Area; therefore, it is not necessary to consider other less accurate means of valuing production not sold arm's-length from this area.

MMS is not proposing to allow the costs of marketing production as an allowable deduction from index or gross proceeds-based pricing. The lease requires the lessee to market production at no cost to the lessor. The Interior Board of Land Appeals has consistently upheld MMS on this position. *See Walter Oil and Gas Corp.*, 111 IBLA 260, 265 (1989), October 25, 1989, and *Arco Oil and Gas Co.*, 112 IBLA 8, 11 (1989). Therefore, in this proposed rule MMS is not altering its long-standing policy.

Proposed § 206.103(d) is § 206.102(c)(3) of the January 1997 proposed rule with minor clarifying word changes. If MMS determines that any of the spot or NYMEX-based prices are no longer available or no longer represent market value, then MMS will exercise the Secretary's authority to establish value based on other relevant matters including well-established market basket formulas.

Proposed Section 206.104 What Index Price Publications Are Acceptable to MMS?

Proposed § 206.104 is paragraphs (c)(4), (c)(5), and (c)(6) of § 206.102 from the January 1997 proposed rule with an added reference to spot prices for crude oil other than ANS.

Proposed Section 206.105 What Records Must I Keep to Support My Calculations of Value Under This Subpart?

Proposed § 206.105 is a clarification that you must be able to show how you calculated the value you reported, including all adjustments. This is important because if you are unable to demonstrate on audit how you calculated the value you reported to MMS, you could be subjected to sanctions for false reporting.

Proposed Section 206.106 What Are My Responsibilities to Place Production Into Marketable Condition and to Market Production?

Proposed § 206.106 is § 206.102(e)(1) of the January 1997 proposed rule with minor clarifying word changes. Also, MMS proposes to delete § 206.102(e)(2) of the January 1997 proposed rule. It referred to potential improper value determinations and related interest, which are already covered in other parts of MMS's regulations.

Proposed Section 206.107 What Valuation Guidance Can MMS Give Me?

Proposed § 206.107 includes the substance of § 206.102(f) of the January 1997 proposed rule in shortened and simplified terms. Also, MMS proposes to delete § 206.102(g) of the January 1997 proposed rule. It discussed audit procedures related to value determinations, and these are covered sufficiently in other parts of MMS's regulations.

Proposed Section 206.108 Does MMS Protect Information I Provide?

Proposed § 206.108 is § 206.102(h) of the January 1997 proposed rule, but with minor wording changes for clarity.

Proposed Section 206.109 When May I Take a Transportation Allowance in Determining Value?

Proposed § 206.109 includes the substance of § 206.104 of the January 1997 proposed rule with only minor wording changes.

Proposed Sections 206.110 and 206.111 How Do I Determine a Transportation Allowance Under an Arm's-Length Transportation Contract, and How Do I Determine a Transportation Allowance Under a Non-Arm's-Length Transportation Contract?

Proposed §§ 206.110 and 206.111 are existing § 206.105(a) and (b) respectively, rewritten to reflect plain English, except that existing § 206.105(b)(5) is deleted as discussed in the January 1997 proposed rule preamble.

Proposed Section 206.112 What Adjustments and Transportation Allowances Apply When I Value Oil Using Index Pricing?

Proposed § 206.112 is a modified version of § 206.105(c) of the January 1997 proposed rule. Proposed § 206.112 lists the various location differentials, quality differentials, and transportation allowances that could apply depending on your individual circumstances. In other words, § 206.112 is a ''menu'' of possible adjustments that could apply in different circumstances. Section 206.113 then prescribes which of the adjustments from the ''menu'' apply to specific circumstances.

One difference from the January 1997 proposed rule is that we eliminated the location differential between the index pricing point and the market center. This is because under the valuation procedures in this further supplementary proposed rule, the index pricing point and market center would be synonymous in all cases except for the Rocky Mountain Area. Where proposed § 206.102 of this further supplementary proposed rule does not apply in the Rocky Mountain Area and NYMEX prices would apply, we propose at § 206.112(f) to designate Cushing, Oklahoma, as the market center for adjustment purposes.

The other difference from the January 1997 proposed rule is that we have added, at proposed § 206.112(e), a separate adjustment to reflect quality differences between your oil as produced at the lease and the oil at the

aggregation point or market center applicable to your lease. You would make these quality adjustments according to the pipeline quality bank specifications and related premia or penalties that may apply in your specific situation. If no pipeline quality bank applies to your production, then you would not take this quality adjustment. Likewise, if a quality adjustment is already contained in an arm's-length exchange agreement from the lease to the market center, you would not also claim a pipeline quality bank adjustment from the lease to the aggregation point or market center. MMS believes this additional adjustment would more accurately reflect actual quality adjustments made by buyers and sellers. MMS requests comments on this change and on the overall location/quality/transportation adjustments proposed.

Proposed Section 206.113 Which Adjustments and Transportation Allowances May I Use When I Value Oil Using Index Pricing?

Paragraphs 206.105(c)(2) and (c)(3) of the January 1997 proposed rule listed the specific adjustments and allowances permitted for leases not located in California/Alaska and those in California/Alaska, respectively. We propose to combine these paragraphs in § 206.113 of this further supplementary proposed rule. This new paragraph would cover all situations regardless of lease location, so no geographical breakdown of adjustments and allowances would be needed. As explained above, § 206.113 would prescribe which adjustments of the § 206.112 ''menu'' apply to your circumstances. Section 206.113 as here proposed covers all circumstances in which index price is used for all geographical areas. Otherwise, there are only two major differences from the methods described in the January 1997 proposed rule. First, you would be permitted to take a separate quality adjustment between your lease and the associated aggregation point or market center as discussed above.

Second, proposed § 206.113(d)(2) of this further supplementary proposed rule would address situations where you dispose of production at the lease in exercising a non-competitive crude oil call and thus are required to use index pricing. In such cases, you would have access to MMS's published differentials between the market center and aggregation point, but you may not have access to the actual cost information from the lease to the aggregation point. In such cases, which should be infrequent, MMS proposes to permit you to request approval for a transportation allowance. In determining the allowance for transportation from the lease to the aggregation point, MMS will look to transportation costs and quality adjustments reported for other oil production in the same field or area, or to available information for similar transportation situations.

Proposed § 206.113(a) covers situations where you transport your oil to an MMS-recognized aggregation point, then enter into an arm's-length exchange agreement between that point and the market center. To arrive at the royalty value, you would adjust the index price by the elements described in § 206.112(a), (c), and (e). The first element is the location/quality differential in your arm's-length exchange agreement between the market center and the aggregation point for your lease. This adjustment results in a value at the aggregation point, recognizing that oil originating there may be of significantly different quality from that of your oil at the lease. The second adjustment reflects your actual transportation costs between the aggregation point and your lease. These costs are determined under §§ 206.110 or 206.111 depending on whether your transportation arrangement is arm's length or not. A third adjustment may be warranted if the quality of your lease production differs from that of the oil you exchanged at the aggregation point. This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at the aggregation point or intermediate commingling points before your oil reaches the aggregation point.

For example, Company A transports its production from a platform in the Gulf of Mexico to an MMS-recognized aggregation point under an arm's-length transportation contract for $0.50 per barrel. Company A then enters into an arm's-length exchange agreement between the MMS-recognized aggregation point and the market center at St. James, Louisiana. Company A then refines the oil it receives at the market center so that it must determine value using an index price under § 206.103. The arm's-length exchange agreement contains a location/quality differential of $0.10 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease is $19.40 ($20.00—$0.10—$0.50) per barrel.

Paragraph 206.113(b) addresses cases where you move your production directly to your or your affiliate's refinery and not to an index pricing point, and establish value based on index prices under § 206.103. In this case, for the reasons explained below, you would deduct from the index price your actual costs of transporting production from the lease to the refinery under § 206.112(c) and any quality adjustments determined by pipeline quality banks under § 206.112(e). The index pricing point is the one nearest the lease.

For example, a lessee or its affiliate in the Gulf of Mexico might transport its production directly to a refinery on the eastern coast of Texas and not to an index pricing point. It may or may not pass through an MMS-identified aggregation point. If that production is not sold at arm's-length, the lessee must base value on the average of the daily mean spot prices for St. James less actual costs of transporting the oil to the refinery and any quality adjustments from the lease to the refinery. Likewise, if a lessee or its affiliate transports Wyoming sour crude oil directly to its refinery in Salt Lake City, Utah, and values the oil based on § 206.103(b)(3), the lessee must base value on the average of the daily NYMEX settled prices, less actual cost of transporting the oil from Salt Lake City and any quality adjustments from the lease to the refinery.

When production is moved directly to a refinery and value must be established using an index, issues arise because the refinery generally is not located at an index pricing point. Consequently, the lessee does not incur actual costs to transport production to an index pricing point, and in any event, the production is not sold at arm's-length at that point. The principle underlying the rules and cases granting allowances for transportation costs is that the lessee is not required to transport production to a market remote from the lease or field at its own expense. When the lessee sells production at a remote market, the costs of transporting to that market are deductible from value at that market to determine the value of the production at or near the lease. Where there are no sales at a distant market, the question of a transportation allowance, as that term always has been understood, does not arise. However, because the lease and the index pricing point may be distant from one another, there is a difference in the value of the production between the index pricing point and the location of the lease. The question becomes how to determine or how best to approximate that difference in value.

In theory, one solution would be for MMS to try to derive what it would cost a lessee to move production from the lease to the index pricing point. There are, in MMS's view, several problems with such an approach. First, it would require a burdensome information collection from industry and require substantial information collection costs from many parties to whom the calculation derived from the information may never be relevant. Second, in many cases it may well not be possible to obtain information on which to base such a calculation. MMS anticipates that many lessees may move production directly to their refineries without shipping the oil through MMS-recognized aggregation points. In many instances, it is likely that no production from the lease or field is transported to the index pricing point that applies under § 206.103. Consequently, in such cases there would be no useful data on which such a cost derivation could be based.

Another possible solution, in theory, would be for MMS to derive a location adjustment between the index pricing point and the refinery. This might be possible, for example, if there are arm's-length exchanges of significant volumes of oil between the index pricing point and the refinery, and if the exchange agreements provide for location adjustments that can be separated from quality adjustments. But establishing such location adjustments on any scale again would require a burdensome information collection effort. MMS also anticipates that in many cases there would be no useful data from which to derive a location adjustment.

MMS therefore believes that the best and most practical proxy method for determining the difference in value between the lease and the index pricing point is to use the index price as value at the refinery, and then allow the lessee to deduct the actual costs of moving the production from the lease to the refinery. This is not a ''transportation allowance'' as that term is commonly understood, but rather is part of the methodology for determining the difference in value due to the location difference between the lease and the index pricing point. Nevertheless, it is appropriate to include this deduction as part of the allowance ''menu'' for situations in which index pricing is used.

MMS proposed this same method in the January 24, 1997, proposed rule, and did not receive any suggestions for alternative methods. Absent better alternatives, MMS believes this method is the best and most reasonable way to calculate the differences in value due to location when production is not actually moved from the lease to an index pricing point.

However, if a lessee believes that applying the index price nearest the lease to production moved directly to a refinery results in an unreasonable value based on circumstances of the lessee's production, § 206.103(e) would allow MMS to approve an alternative method if the lessee can demonstrate the market value at the refinery.

It would be the lessee's burden to provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to (1) costs of acquiring other crude oil at or for the refinery; (2) how adjustments for quality, location, and transportation were factored into the price paid for the other oil; (3) the volumes acquired for the refinery; and (4) other appropriate evidence or documentation that MMS requires. If MMS approves a value representing market value at the refinery, there would be no deduction for the costs of transporting the oil to the refinery under §§ 206.113(b) and 206.112(c). Whether any quality adjustment would be available would depend on whether the oil passed through a pipeline quality bank or if an arm's-length exchange agreement used to get oil to the refinery contained a separately identifiable quality adjustment.

Proposed § 206.113(c) covers situations where you transport your oil directly to an MMS-identified market center. To arrive at the royalty value, you would adjust the index price by the elements described in § 206.112(d) and (e). The first element is the actual costs of transporting production from the lease to the market center. A second adjustment may be warranted if the quality of your lease production differs from quality of the oil at the market center. This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at the aggregation point or intermediate commingling points before your oil reaches the market center.

For example, Company A transports its production from a platform in the Gulf of Mexico to St. James, Louisiana, under a non-arm's-length transportation contract with its affiliate. The actual costs of transporting production under § 206.111 is $0.50 per barrel. The average of the daily spot prices at St. James is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease is $19.50 ($20.00—$0.50) per barrel.

Proposed paragraph (d)(1) covers situations where you cannot use paragraphs (a), (b), or (c) of § 206.113. To arrive at the royalty value, you would adjust the index price by the elements described in § 206.112(b), (c), and (e). For example, Company A transports its production from a lease in the Gulf of Mexico through its own pipeline to an MMS-recognized aggregation point. Company A's actual costs of transportation from the lease to the aggregation point are $0.10 per barrel. Company A then enters into an exchange agreement with its affiliate. After the exchange, Company A refines the oil so that it must value the oil using § 205.103. The MMS-published differential from the aggregation point to the market center is $0.50 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease is $19.40 ($20.00—$0.50—$0.10) per barrel.

MMS requests any comments you may have regarding the specific permissible adjustments and transportation allowances under different oil disposal situations.

Proposed Section 206.114 What if I Believe the MMS-Published Location/Quality Differential is Unreasonable in My Circumstances?

This section would include the substance of § 206.105(c)(4) of the January 1997 proposed rule. It would provide that MMS may approve an alternate location/quality differential if you can show that the MMS-calculated differential under § 206.112(b) of this further supplementary proposed rule is unreasonable given your circumstances. However, we propose to eliminate the details of filing such a request as listed in the January 1997 proposed rule. Some of these details were confusing and some were unnecessary because they are covered in other parts of MMS's regulations. We believe it suffices to simply provide you an opportunity to request an alternate differential. Please provide us any comments you may have regarding such requests.

Note also that MMS proposes to entirely eliminate § 206.105(c)(5), (c)(6), and (c)(7) of the January 1997 proposed rule. They referred to publications used to make index price adjustments based on spot price differences between the index pricing point and the market center. Since this adjustment no longer applies in the further supplementary proposed rule, we have removed these paragraphs.

Proposed Section 206.115 How Will MMS Identify Market Centers and Aggregation Points?

Proposed § 206.115 is § 206.105(c)(8) of the January 1997 proposed rule with only minor wording changes. In the January 1997 proposed rule preamble, MMS listed market centers for purposes of the rule. That list included Guernsey, Wyoming. MMS now proposes to eliminate Guernsey as a market center for the reasons given earlier. Also, MMS has attempted to refine and limit the aggregation points identified in the January 1997 proposed rule to better reflect actual locations where oil is aggregated. The current list of proposed aggregation points is included as Attachment B to this preamble. We note that, as this further supplementary proposed rule indicates, we would continue to refine the list of aggregation points and associated market centers. We would add and delete aggregation points as experience dictates. This will help to keep the location/quality/transportation adjustment process realistic and current.

Proposed Section 206.116 What Are My Reporting Requirements Under an Arm's-Length Transportation Contract?

Proposed § 206.116 is § 206.105(c)(1) of the existing rule rewritten in plain English.

Proposed Section 206.117 What Are My Reporting Requirements Under a Non-Arm's-Length Transportation Contract?

Proposed Section § 206.117 is § 206.105(c)(2) of the existing rule rewritten in plain English, except § 206.105(c)(2)(iv) would be deleted as described in the January 1997 proposed rule preamble.

Proposed Section 206.118 What Information Must I Provide To Support Index Pricing Adjustments, and How Is That Information Used?

Proposed § 206.118 includes the substance of § 206.105(d)(3) of the January 1997 proposed rule. This section describes information and filing requirements for proposed Form MMS–4415. The previous proposal stated that you must submit information on all your and your affiliates' crude oil production, and not just information related to Federal lease production. MMS received many comments on the form filing burden, including comments that reporting for non-Federal lease production should not be required. Consistent with its other attempts to streamline the differential process, MMS proposes to limit the information required on Form MMS–4415 to that associated with production from Federal leases only. However, we reserve the right to review information related to your non-Federal production under 30 CFR part 217. We clarified this point in the revised instructions included with Form MMS–4415, Attachment A. We have eliminated other reporting requirements on Form MMS–4415 and revised all the related instructions to clarify the information required.

MMS also received various comments on timing of submittal of Form MMS–4415. Some commenters believed the information should be submitted more often than yearly because the differential information can change rapidly. Others believed that differential changes did not change often and that MMS should require Form MMS–4415 submittal less frequently. On balance, MMS proposes to maintain the submittal frequency at once a year as originally proposed.

Also, in its written comments, one industry organization stated that few of their members have non-competitive calls that are exercised. It appears that most of the producers who would be required to pay on index prices would be doing so because they have affiliates that are physically moving or exchanging the oil to market centers. If that is true, they would be able to use their actual differentials and would not rely on MMS's published location differentials derived from Form MMS–4415 data. MMS requests comments on whether this is a fair representation and, if so, could MMS eliminate Form MMS–4415 entirely and deal with those who don't have access to the needed data on an exception basis?

Proposed Section 206.119 What Interest and Assessments Apply if I Improperly Report a Transportation Allowance?

Proposed § 206.119 is § 206.105(d) of the existing rule rewritten in plain English.

Proposed Section 206.120 What Reporting Adjustments Must I Make for Transportation Allowances?

Proposed § 206.120 is § 206.105(e) of the existing rule rewritten in plain English.

Proposed Section 206.121 Are Costs Allowed for Actual or Theoretical Losses?

Proposed § 206.121 is § 206.105(f) of the existing rule rewritten in plain English, except the reference to the Federal Energy Regulatory Commission or State regulatory agency approved tariffs would be deleted as described in the January 1997 proposed rule preamble.

Proposed Section 206.122 How Are the Royalty Quantity and Quality Determined?

Proposed § 206.122 is § 206.103 of the existing rule rewritten in plain English.

Proposed Section 206.123 How Are Operating Allowances Determined?

Proposed § 206.123 is § 206.106 of the existing rule rewritten in plain English.

Proposed Change to 30 CFR 208.4(b)(2)

In the January 1997 proposed rule, MMS proposed to modify the RIK valuation procedures to tie them directly to MMS's proposed index pricing provisions less a location/quality differential specified in the RIK contract. MMS has decided not to proceed with this approach. Instead, MMS is considering establishing future RIK pricing terms directly within the contracts it writes with RIK program participants. MMS's goal is still to achieve pricing certainty in RIK transactions. But because of its revised plans, MMS is dropping its proposed January 1997 change to 30 CFR 208.4(b)(2).

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). Approximately 600 payors pay royalties to MMS on oil production from Federal lands. The majority of these payors are considered small businesses under the Regulatory Flexibility Act definitions. This rule will not significantly impact a substantial number of small entities because this rule does not add significant or costly new reporting requirements. Only the integrated payors with either a refinery, marketing capability, or both will be impacted. As a whole, this set of payors is primarily made up of very large oil companies with over 500 employees. The proposed collection of information will likely also impact a few companies with less than 500 employees (small businesses by the Office of Management and Budget (OMB) definitions). However, if a company is small and they engage in very few contracts where oil is exchanged, they have less information to report. We estimate that smaller companies (i.e., companies with less than 10 million but greater than one million barrels of annual domestic production, which included 3.5 Federal lessees in 1996) will each have

approximately 50 exchange agreements to review to identify the relevant contracts needed for reporting under this proposed rule. Of those contracts, we estimate that each small company will have to report on 5 exchange agreements. We estimate that the burden for a small company is 29.25 hours including 20 hours to aggregate the exchange agreement contracts to a central location, 8 hours to sort the exchange agreement contracts, and 1.25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For the 35 small companies, we estimate that the burden is 1,023.75 hours. MMS believes that because of the very small number of companies impacted and the relatively small costs to those companies of complying with the information collection, this is not significant action.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. § 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments, or the private sector.

Fairness Board and National Ombudsman Program

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 regional fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agencies responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call 1–888–734–3247.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988

The Department has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this rule is a significant rule under this Executive Order 12866 section 3(f)(4). This states a rule is considered a significant regulatory action if it ''Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' The Department's analysis of these proposed revisions to the oil valuation regulations indicate these changes will not have a significant economic effect, as defined by section 3(f)(1) of this Executive Order. However, the Executive Order 12866 regulatory compliance and review requirements will be met and are available upon request. MMS estimates that the economic impact of this rule will be about $66 million. This estimate is based on a comparison of royalty payments received from Federal onshore and offshore leases in 1996 to what would be required under the proposed rule. The analysis was completed for each of the three geographic divisions of the proposed rule. Producers without refinery capacity were not included in the analysis, as we assumed that those payors would continue to value their production based on gross proceeds received under an arm's-length contract. In the analysis, we compared index prices adjusted for location and quality to prices reported on Form MMS–2014 less any reported transported allowances to arrive at the overall net gain or loss associated with the proposed rulemaking.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior, Washington, D.C. 20503. Send copies of your comments to Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; e-Mail address is David__Guzy@mms.gov.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The information collection will be on new Form MMS–4415 titled *Oil Location Differential Report.* Part of the valuation of oil not sold under arm's-length contract relies on price indices that lessees may adjust for location/quality differences between the market center and the aggregation point or lease. Federal lessees and their affiliates would be required to give MMS specific information from their various oil exchange agreements and sales contracts applicable to Federal production. From this data MMS would calculate and publish representative location differentials for lessees' use in reporting royalties in various areas. This process would introduce certainty into royalty reporting. Rules establishing the use of Form MMS–4415 to report oil location differentials are at proposed 30 CFR 206.118.

The number of exchange agreement contracts involving aggregation points and market centers required to be reported under this proposed rule is considerably less than required to be reported on under the January 24, 1997, proposed rule. While we recognize that the initial reporting burden will still be sizable, it is reasonable to expect that the burden in succeeding years will be less because of efficiencies gained in the initial filing of Form MMS–4415. Our estimate is for the initial reporting burden and is based upon review of comments from industry from the initial, supplemental and further supplementary proposed rulemakings, comments at public meetings and comments at the MMS workshops held in October 1997 and consultation with MMS auditors about their review of exchange agreement contracts that they have examined in their recent work.

While MMS requires that only aggregation point to market center exchange agreement contracts be reported, we anticipate that companies will have to sort through their exchange agreement contracts before the relevant exchange agreement contracts can be compiled and the required information extracted and reported. Almost all Federal lessees who will be required to file this exchange agreement contract information; that is, exchanges between aggregation points and market centers, will have annual total (Federal and non-Federal) domestic production in excess of one-million barrels of crude oil; fifty-

nine (59) lessees had annual total domestic production in excess of one-million barrels of crude oil in 1996.

We estimate that a large company, i.e., a company with over 30 million barrels annual domestic production (13 Federal lessees), will have approximately 1,000 exchange agreement contracts that they will have to review in order to identify the relevant contracts needed for reporting purposes under this proposed rule. We estimate that a large company will have to report on 100 exchange agreement contracts following a review of all of the company's exchange agreement contracts. We estimate that the burden associated with fulfilling the information collection requirements of this proposed rule for a larger company is 185 hours. The burden hour estimate of 185 hours includes 80 hours to aggregate the exchange agreement contracts to a central location, 80 hours to sort the exchange agreement contracts, and 25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For 13 larger companies, we estimate that the burden is 2,405 hours (185 hours × 13 larger companies); using a per hour cost of $35, we estimate the cost is $84,175.

We estimate that a mid-sized company, i.e., a company with between 10 and 30 million barrels annual domestic production (11 Federal lessees), will have approximately 250 exchange agreement contracts that they will have to review in order to identify the relevant exchange contracts needed for reporting purposes under this proposed rule. We estimate that a mid-sized company will have to report on 25 exchange agreement contracts following a review of all of the company's exchange agreement contracts. We estimate that the burden associated with fulfilling the information collection requirements of this proposed rule for a mid-sized company is 106.25 hours. The burden hour estimate of 106.25 hours includes 60 hours to aggregate the exchange agreement contracts to a central location, 40 hours to sort the exchange agreement contracts, and 6.25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For 11 mid-sized companies, we estimate that the burden is 1168.75 hours (106.25 hours × 11 mid-sized companies); using a per hour cost of $35, we estimate the cost is $40,906.25.

We estimate that a small company, i.e., a company with less than 10 barrels annual domestic production (35 Federal lessees), will have approximately 50 exchange agreement contracts that they will have to review in order to identify the relevant exchange agreement contracts needed for reporting purposes under this proposed rule. We estimate that a small company will have to report on 5 exchange contracts following a review of all of the company's exchange agreement contracts. We estimate that the burden associated with fulfilling the information collection requirements of this proposed rule for a smaller company is 29.25 hours. The burden hour estimate of 29.25 hours includes 20 hours to aggregate the exchange agreement contracts to a central location, 8 hours to sort the exchange agreement contracts, and 1.25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For 35 smaller companies, we estimate that the burden is 1023.75 hours (29.25 hours × 35 larger companies); using a per hour cost of $35, we estimate the cost is $35,831.25.

We estimate that the total burden for all respondents is 4,597.5 hours. We estimate that the cost to the respondents for this information collection is $160,912.50.

In compliance with the Paperwork Reduction Act of 1995, section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)) is not required.

V. Request for Comments

You should submit written comments, suggestions, or objections regarding this proposal to the location identified in the **ADDRESSES** section of this notice. You must submit your comments on or before the date identified in the **DATES** section of this notice.

List of Subjects 30 CFR Parts 206 and 208

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: December 29, 1997.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons given in the preamble, MMS proposes to amend subpart C of part 206 in Title 30 of the Code of Federal Regulations as follows:

PART 206—PRODUCT VALUATION

Subpart C—Federal Oil

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701, 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

§ 206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you as a lessee must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. If you are a designee and if you dispose of production on behalf of a lessee, the terms ''you'' and ''your'' in this subpart refer to you. If you are a designee and only report for a lessee, and do not dispose of the lessee's production, references to ''you'' and ''your'' in this subpart refer to the lessee and not the designee. Accordingly, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(b) This subpart does *not* apply in three situations. If the regulations in this subpart are inconsistent with a Federal statute, a settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or an express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, or lease provision will govern to the extent of the inconsistency.

(c) MMS may audit and adjust all royalty payments.

§ 206.101 Definitions.

The following definitions apply to this subpart:

Affiliate means a person who owns, is owned by, or is under common ownership with another person to the extent of 10 percent or more of the voting securities of an entity, interest in a partnership or joint venture, or other forms of ownership. MMS may require the lessee to certify the percentage of ownership. Aside from the percentage ownership criteria, relatives, either by blood or by marriage, are affiliates.

Aggregation point means a central point where production is aggregated for shipment to market centers or refineries. It includes, but is not limited to, blending and storage facilities and connections where pipelines join. Pipeline terminations at refining centers also are classified as aggregation points. MMS periodically will publish in the **Federal Register** a list of aggregation points and associated market centers.

Area means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Competitive crude oil call means a crude oil call that contains a clause basing the price on what other parties are willing to competitively bid to purchase the production.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Crude oil call means the right of one person to buy, at its option, all or a part of the second person's oil production from an oil and gas property. This right generally arises as a condition of the sale or farmout of that property from the first person to the second, or as a result of other transactions between them. The price basis may be specified when the property is sold or farmed out.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. MMS names and designates boundaries of OCS fields.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or MMS approves for onshore and offshore leases, respectively.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds include, but are not limited to, the following examples:

(1) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(2) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Index pricing means using NYMEX futures prices, Alaska North Slope (ANS) crude oil spot prices, or other appropriate crude oil spot prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other

agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of oil or gas products—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

Load oil means any oil used in the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

Location differential means the value difference for oil at two different points.

Market center means a major point MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

Minimum royalty means that minimum amount of annual royalty the lessee must pay as specified in the lease or in applicable leasing regulations.

MMS-approved publication means a publication MMS approves for determining NYMEX prices, ANS or other spot prices, or location differentials.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

Non-competitive crude oil call means a crude oil call that does not contain a clause basing the price on what other parties are willing to competitively bid to purchase the production.

NYMEX means the New York Mercantile Exchange.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Prompt month means the nearest month for which NYMEX futures are traded on any given day. Futures trading terminates at the close of business on the third business day before the 25th calendar day of the month preceding the delivery month. For example, if November 25 is a Tuesday, futures trading for the prompt month of December would end November 20, the third-previous business day. Trading for the December prompt month would begin October 23, the day following the end of trading for the November prompt month.

Quality differential means the value difference between two oils due to differences in their API gravity, sulfur content, viscosity, metals content, and other quality factors.

Rocky Mountain Area means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer. The seller may not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tendering program means a company offer of a portion of its crude oil production from a field, area, or other geographical/physical unit for competitive bidding.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell under an arm's-length contract?

(a) The value of oil under paragraphs (a)(1) through (4) of this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under this subpart. See paragraph (c) of this section for exceptions. Use this paragraph to value oil that:

(1) You sell under an arm's-length sales contract;

(2) You sell or transfer to your affiliate and that affiliate, or another affiliate, then sells the oil under an arm's-length contract;

(3) You sell or transfer to another person under a non-arm's-length contract and that person, or an affiliate of that person, sells the oil under an arm's-length contract; or

(4) You sell in the exercise of a competitive crude oil call.

(b) If oil valued under paragraphs (a)(2) or (a)(3) of this section is sold under multiple arm's-length contracts, the value of the oil is the volume-weighted average of the values established under this section for each contract.

(c) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) If MMS determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, MMS may require that you value the oil sold under that contract either under § 206.103 or at the total consideration received.

(2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(3) You must use § 206.103 to value oil disposed of under an exchange agreement. However, if you enter into one or more arm's-length exchange agreements, and following those exchanges you dispose of the oil in a transaction to which paragraph (a) of this section applies, then you must value the oil under paragraph (a) of this section. Adjust that value for any location or quality differential or other adjustments you received or paid under the arm's-length exchange agreement(s). But if MMS determines that any arm's-length exchange agreement does not

reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103.

(4) You must use § 206.103 to value oil disposed of in the exercise of a non-competitive crude oil call.

(d) *What else must I do if I value oil under paragraph (a)?*

(1) You must be able to demonstrate that a contract or exchange agreement is an arm's-length contract or exchange agreement.

(2) MMS may require you to certify that arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(3) You must base value on the highest price the seller can receive through legally enforceable claims under the contract. If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. If the seller makes timely application for a price increase or benefit allowed under the contract but the purchaser refuses, and the seller takes reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits. This paragraph will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

§ 206.103 How do I value oil that I cannot value under § 206.102?

This section explains how to value oil that you may not value under § 206.102.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean Alaska North Slope (ANS) spot prices published in any MMS-approved publication during the calendar month preceding the production month. To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under §§ 206.112 and 206.113 of this subpart.

(b) *Production from leases in the Rocky Mountain Area.* Value your oil under the first applicable of the following paragraphs:

(1) If you have an MMS-approved tendering program, the value of production from leases in the area the tendering program covers is the highest price bid for tendered volumes. You must offer and sell at least 33⅓ percent of your production from both Federal and non-Federal leases in that area under your tendering program. You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area. MMS will provide additional criteria for approval of a tendering program in its ''Oil and Gas Payor Handbook.''

(2) Value is the volume-weighted average gross proceeds accruing to the seller under you or your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

(3) Value is the average of the daily NYMEX futures settle prices at Cushing, Oklahoma, for the light sweet crude oil contract for the prompt month that is in effect on the first day of the month preceding the production month. Use only the days and corresponding NYMEX prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under §§ 206.112 and 206.113 of this subpart.

(4) If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Area.* Value is the average of the daily mean spot prices—

(1) For the market center nearest your lease where spot prices are published in an MMS-approved publication;

(2) For the crude oil most similar in quality to your oil (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils. Their quality specifications differ significantly); and

(3) For deliveries during the production month. Calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under §§ 206.112 and 206.113.

(d) If MMS determines that any of the index prices referenced in paragraphs (a), (b), and (c) of this section are unavailable or no longer represent reasonable royalty value, in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

(e) *What if I transport my oil to my refinery and believe that use of a particular index price is unreasonable?*

(1) If you transport your oil directly to your or your affiliate's refinery, or exchange your oil at arm's length for oil delivered to your or your affiliate's refinery, and if value is established under this section at an index price, and if you believe that use of the index price is unreasonable, you may apply to the MMS Director for approval to use a value representing the market at the refinery.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that MMS requires.

(3) If the MMS Director approves a value representing market value at the refinery, you may not take an allowance against that value under §§ 206.112(c) and 206.113(b).

§ 206.104 What index price publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

(b) Any publication may petition MMS to be added to the list of acceptable publications.

(c) MMS will reference the tables you must use in the publications to determine the associated index prices.

§ 206.105 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value. You must be able to show how you calculated the value you reported, including all adjustments for location, quality, and transportation, and how you complied with these rules. Recordkeeping requirements are found at parts 207 and 217 of this title. MMS may review and audit such data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§ 206.106 What are my responsibilities to place production into marketable condition and to market production?

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government unless otherwise provided in the lease agreement. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 206.107 What valuation guidance can MMS give me?

You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with a non-binding determination of the guidance you request.

§ 206.108 Does MMS protect information I provide?

Certain information you submit to MMS regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.109 When may I take a transportation allowance in determining value?

(a) *What transportation allowances are permitted when I value production based on gross proceeds?* This paragraph applies when you value oil under § 206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and the movement to the sales point is not gathering. MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under §§ 206.110 or 206.111, as applicable. For offshore leases, you may take a transportation allowance for your reasonable, actual costs to transport oil taken as royalty-in-kind (RIK) to the delivery point specified in the contract between the RIK oil purchaser and the Federal Government. However, for onshore leases, you may not take a transportation allowance for transporting oil taken as RIK.

(b) *What transportation allowances and other adjustments apply when I value production based on index pricing?* If you value oil using an index price under § 206.103, MMS will allow a deduction for certain costs associated with transporting oil as provided under §§ 206.112 and 206.113.

(c) *Are there limits on my transportation allowance?*

(1) Except as provided in paragraph (c)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a non-binding determination. You may never reduce the royalty value of any production to zero.

(d) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in §§ 206.110 and 206.111. You must express transportation allowances for oil as dollars per barrel.

(e) *What additional payments may I be liable for?* If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest under applicable rules if you understated your transportation allowance. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.119.

§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting oil under that contract, except as provided in paragraphs (a)(1) and (a)(2) of this section. You must be able to demonstrate that your contract is arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.111.

(2) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, then you must calculate the transportation allowance under § 206.111.

(b)(1) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). You may not claim an allowance for the costs of transporting lease production which is not royalty-bearing without MMS approval except as provided in this section.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(c) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation. You must submit your initial proposal, including all available data, within 3 months after the last day of the month for which you claim a transportation allowance.

(d) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar value equivalent.

(e) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. You may use the transportation factor in determining your gross proceeds for the sale of the product. You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?

(a) If you or your affiliate have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform your own transportation services, calculate your transportation allowance based on the reasonable, actual costs provided in this section.

(b) Base your transportation allowance for non-arm's-length or no-contract situations on your or your affiliate's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either:

(1) Depreciation and a return on undepreciated capital investment under paragraph (b)(4)(i) of this section, or

(2) A cost equal to the initial capital investment in the transportation system multiplied by a rate of return under paragraph (b)(4)(ii) of this section.

(c) Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(1) Allowable operating expenses include:

(i) Operations supervision and engineering; operations labor;

(ii) Fuel;

(iii) Utilities;

(iv) Materials;

(v) Ad valorem property taxes;

(vi) Rent;

(vii) Supplies; and

(viii) Any other directly allocable and attributable operating expense which you can document.

(2) Allowable maintenance expenses include:

(i) Maintenance of the transportation system;

(ii) Maintenance of equipment;

(iii) Maintenance labor; and

(iv) Other directly allocable and attributable maintenance expenses which you can document.

(3) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(4) Use either depreciation or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without MMS approval.

(i) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without MMS approval. A change in ownership of a transportation system will not alter the depreciation schedule you or your affiliate established for purposes of the allowance calculation. With or without a change in ownership, you may only depreciate a transportation system once. You may not depreciate equipment below a reasonable salvage value.

(ii) For transportation facilities first placed in service after March 1, 1988, you may use as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return under paragraph (5) of this section. You may not claim an allowance for depreciation.

(5) The rate of return is the industrial rate for Standard and Poor's BBB rating. Use the monthly average rate published in ''Standard and Poor's Bond Guide'' for the first month of the reporting period for which the allowance applies. Calculate the rate at the beginning of each subsequent transportation allowance reporting period.

(d)(1) Calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocate costs in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). You may not take an allowance for transporting lease production which is not royalty-bearing without MMS approval, except as provided in this paragraph.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method if it is consistent with the purposes of the regulations in this subpart.

(e) Where both gaseous and liquid products are transported through the same transportation system, you must propose a cost allocation procedure to MMS. You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation. You must submit your initial proposal, including all available data, within 3 months after the last day of the month for which you request a transportation allowance.

§ 206.112 What adjustments and transportation allowances could apply when I value oil using index pricing?

When you use index pricing to calculate the value of production under § 206.103, you must adjust the index price for the location and quality differentials and you may adjust it for certain transportation costs, as prescribed in this section and § 206.113. This section describes the different adjustments and transportation allowances that could apply.

Section 206.113 specifies which of these adjustments and allowances apply to you depending upon how you dispose of your oil. These adjustments and transportation allowances are as follows:

(a) A location/quality differential determined from your arm's-length exchange agreement that reflects the difference in value of crude oil between the aggregation point and the market center, or between your lease and the market center.

(b)(1) An MMS-specified location/quality differential that reflects the difference in value of crude oil between the aggregation point and the market center.

(2) MMS will publish annually a series of differentials applicable to various aggregation points and market centers based on data MMS collects on Form MMS–4415. MMS will calculate each differential using a volume-

weighted average of the differentials reported on Form MMS–4415 for similar quality crudes for the aggregation point-market center pair for the previous reporting year. MMS may exclude apparent anomalous differentials from that calculation. MMS will publish separate differentials for different crude oil qualities that are identified separately on Form MMS–4415 (for example, sweet versus sour or varying gravity ranges).

(3) MMS will publish these differentials in the **Federal Register** by [the effective date of the final regulation] and by January 31 of all subsequent years. Use the MMS-published differential to report the value of production occurring during the calendar year.

(c) Actual transportation costs between the aggregation point and the lease determined under § 206.110 or 206.111.

(d) Actual transportation costs between the market center and the lease determined under § 206.110 or 206.111.

(e) Quality adjustments based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points, at the aggregation point, or at the market center that applies to your lease.

(f) For purposes of this section and § 206.113, the term market center means Cushing, Oklahoma, when determining location/quality differentials and transportation allowances for production from leases in the Rocky Mountain Area.

§ 206.113 Which adjustments and transportation allowances may I use when I value oil using index pricing?

(a) If you dispose of your production under an arm's-length exchange agreement, use § 206.112 (a), (c), and (e) to determine your adjustments and transportation allowances. For non-arm's-length exchange agreements, use paragraph (d) of this section.

(b) If you move lease production directly to an alternate disposal point (for example, your refinery), use § 206.112 (c) and (e) to determine your actual costs of transportation and to adjust for quality. Treat the alternate disposal point as the aggregation point to apply § 206.112(c).

(c) If you move your oil directly to a MMS-identified market center, use § 206.112 (d) and (e) to determine your actual costs of transportation and to adjust for quality.

(d)(1) If you cannot use paragraph (a), (b), or (c) of this section, use § 206.112 (b), (c), and (e) to determine your location/quality adjustments and transportation allowances, except as provided in paragraph (d)(2) of this section.

(2) If you dispose of your production at the lease in the exercise of a non-competitive crude oil call, and if you cannot obtain information regarding the actual costs of transporting oil from the lease to the aggregation point, or pipeline quality bank specifications necessary to apply § 206.112 (c) and (e), you must request approval from MMS for any transportation allowance.

§ 206.114 What if I believe the MMS-published location/quality differential is unreasonable in my circumstances?

If you can demonstrate to MMS that the MMS-calculated differential under § 206.112(b) is unreasonable based on the circumstances of your production, MMS may approve an alternative location/quality differential.

§ 206.115 How will MMS identify market centers and aggregation points?

MMS periodically will publish in the **Federal Register** a list of aggregation points and the associated market centers. MMS will monitor market activity and, if necessary, add to or modify the list of market centers and aggregation points and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers and aggregation points:

(a) Points where MMS-approved publications publish prices useful for index purposes;

(b) Markets served;

(c) Pipeline and other transportation linkage;

(d) Input from industry and others knowledgeable in crude oil marketing and transportation;

(e) Simplification; and

(f) Other relevant matters.

§ 206.116 What are my reporting requirements under an arm's-length transportation contract?

You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur. MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

§ 206.117 What are my reporting requirements under a non-arm's-length transportation contract?

You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.

(a) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable oil transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems.

(b) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction.

§ 206.118 What information must I provide to support index pricing adjustments, and how is that information used?

You must submit information on Form MMS–4415 related to all your and your affiliates' crude oil production from Federal leases. Provide information regarding differentials between MMS-defined market centers and aggregation points according to the instructions provided with Form MMS–4415. All Federal lessees (or their affiliates, as appropriate) must initially submit Form MMS–4415 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year.

§ 206.119 What interest and assessments apply if I improperly report a transportation allowance?

(a) If you or your affiliate net a transportation allowance against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease selling arrangement per sales period.

(b) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under § 206.109, you must pay interest on the excess allowance amount taken from the date that amount is taken to the date you or your affiliate file an exception request MMS approves.

(c) If you or your affiliate report an erroneous or excessive transportation allowance resulting in an underpayment of royalties, you must pay the additional royalties plus interest under 30 CFR 218.54.

§ 206.120 What reporting adjustments must I make for transportation allowances?

If your or your affiliate's actual transportation allowance is less than the amount you claimed on Form MMS–2014 for each month during the allowance reporting period, you must pay additional royalties plus interest computed under 30 CFR 218.54 from the beginning of the allowance reporting

period when you took the deduction to the date you repay the difference. If the actual transportation allowance is greater than the amount you claimed on Form MMS–2014 for each month during the allowance form reporting period, you are entitled to a credit plus interest under applicable rules.

§ 206.121 Are costs allowed for actual or theoretical losses?

For other than arm's-length contracts, you are not allowed a deduction for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

§ 206.122 How are royalty quantity and quality determined?

(a)(1) Compute royalties based on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases.

(2) If the value of oil determined under this subpart is based upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement approved by the BLM for onshore leases, adjust the value for those differences in quantity and/or quality.

(b) You may not claim a deduction from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you may incur prior to the royalty settlement metering or measurement point will not be subject to royalty provided that BLM determines that the loss is unavoidable.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this part. You may not claim a deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that take place either prior to or beyond the approved point of royalty settlement.

8. Section 206.106 is revised and redesignated as § 206.123.

§ 206.123 How are operating allowances determined?

MMS may use an operating allowance for the purpose of computing payment obligations when specified in the notice of sale and the lease. MMS will specify the allowance amount or formula in the notice of sale and in the lease agreement.

Note: The following Attachments will not appear in the Code of Federal Regulations.

BILLING CODE 4310–MR–P

Attachment A

Federal Oil Location Differential Report

OMB Control Number: 1010-XXXX
Expiration date:

Lessee Name: _____ Lessee's Payor Code: __ __ __ __ __

Address: _____

City, State: _____ Zip: _____

Reporting Period (MM/DD/YY) _____ to (MM/DD/YY) _____

1. Contract Party Name	Other Exchange Party _____ Exchange Party's Payor Code (if available) __ __ __ __ __
2. Contract Type and Identification	__ Buy/Sell, __ Non-Cash Exchange, __ In/Out Transportation Exchange Contract #
3. Contract Term	Effective Date: ___/___/___ (MM/DD/YY) _____ No Change Initial Term: _____ (Months) Expiration Terms: _____ month-to-month extensions, _____ fixed duration .

4. Exchange Pair	Oil You Transferred	Oil You Received
Case (A) or Case (B)	(A) Aggregation Point _____	Market Center _____
	(B) Market Center _____	Aggregation Point _____

5. Volume Terms	Oil You Transferred	Oil You Received
	All Available (_____ Est. B/D)	All Available (_____ Est. B/D)
	Fixed (_____ Fixed B/D)	Fixed (_____ Fixed B/D)

6. Exchange Differential	
	Exchange Differential Received (+) _____.__ $/BBL or Paid (-) _____.__ $/BBL

7. Quality Information and Adjustments	Oil You Transferred	Oil You Received
	API Gravity: Actual _____.__° API Deemed _____.__° API	API Gravity: Actual _____.__° API Deemed _____.__° API
	Gravity Adjustment Received (+)_____.__ $/BBL or Paid (-) _____.__$/BBL ___ No Gravity Adjustment	
	Sulfur: Actual Sulfur Content: _____.__ % Deemed Sulfur Content: _____.__ %	Sulfur: Actual Sulfur Content _____.__ % Deemed Sulfur Content _____.__ %
	Sulfur Adjustment Received (+) _____.__ $/BBL or Paid (-) ____.____ $/_BBL____ No Sulfur Adjustment	
	Other Quality Adjustment _____ Adjustment Received (+) _____.__ $/BBL or Paid (-) ____.__ $/BBL	

Have you received any other consideration, in any form, for the sale or purchase of this crude oil, either at this location or at any other location? (__Yes, or __No). If Yes, explain:_____

Authorized Signature_____ **Date** _____

Form Preparer (Please print) _____ **Day time Phone ( ) -**

Paperwork Reduction Act of 1995 Statement

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to allow MMS to decrease reliance on oil posted prices, develop valuation rules that better reflect market value, and add more certainty to valuing oil produced from Federal lands.The public reporting burden for this information collection is estimated to average between 26 hours and 85 hours per response, including the time for aggregating, sorting, extracting and submitting the information. MMS will keep confidential, under applicable laws and regulations, any and all data submitted that is privileged, confidential, or otherwise exempt. Direct comments regarding the burden estimate or any other aspect of this questionnaire including suggestions for reducing this burden to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U. S. Department of the Interior, Washington, DC 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Step-by-Step Instructions for Form MMS-4415

This form's purpose is to collect value differential information for oil exchanged under arm's-length exchange agreements between paired aggregation points and associated market centers. MMS will use this information to calculate and publish differentials for use by lessees and payors in determining quality and location adjustments to index prices used for royalty purposes. The proposed rule provides several situations where lessees must use index prices to value Federal oil because the oil is not sold under an arm's-length contract (§ 206.103). If lessees do not have actual quality and location differential information between the paired aggregation points and associated market centers to adjust the index price, they must rely on MMS to calculate and publish such information. The differentials may be related to quality, volume, or location. In the Preamble to the proposed rule (62 FR 3742), MMS identifies the paired aggregation points and associated market centers. To collect this information, MMS is requiring that you as a Federal lessee submit differential information on any oil produced from Federal leases and exchanged under an arm's-length agreement between these paired aggregation points and market centers. You must fill out the requested information on a separate Form MMS-4415 for each of your arm's-length exchange contracts in effect during the previous 12 month period involving Federal oil. All Federal lessees (or their affiliates, as appropriate) must initially submit Form MMS-4415 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year. Below are step-by-step instructions to complete Form MMS-4415.[1]

Company (Lessee) Information

Fill out your company name (whether lessee or affiliate), address, and zip code. Write in the reporting period this form covers. Forms are filed annually. Your company name, MMS payor code, and reporting period should appear on each form. If more than one form is needed to provide the required information, the address may be omitted from subsequent forms provided that the cover form containing the address is attached.

1. **Contract Party Name:** Write the name of the other party to your exchange agreement. If that party has an MMS payor code, write it in the space provided (if known).

2. **Contract Type and Identification:** Check the appropriate box to indicate the contract type. **[Buy/Sell** *is an exchange where monetary value is assigned to both volumes in the exchange.* **Non-Cash Exchange** *is a transaction where no*

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[1] Paperwork Reduction Act of 1995 Statement

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to allow MMS to decrease reliance on oil posted prices, develop valuation rules that better reflect market value, and add more certainty to valuing oil produced from Federal lands. The public reporting burden for this information collection is estimated to average between 26 hours and 85 hours per response, including the time for aggregating, sorting, extracting and submitting the information. MMS will keep confidential, under applicable laws and regulations, any and all data submitted that is privileged, confidential, or otherwise exempt. Direct comments regarding the burden estimate or any other aspect of this questionnaire including suggestions for reducing this burden to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U. S. Department of the Interior, Washington, DC 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Step-by-Step Instructions for Form MMS-4415

monetary value is assigned to either volume in the exchange; instead, a dollar amount is assigned to the difference in value between the two volumes. **In/Out transportation exchange** *is used for the purpose of transporting oil on proprietary pipelines where the shipper takes possession of the oil during transit and sells the oil back to the contracting party at the other end of the pipeline.* Also fill in the **Contract Number** -- use the I.D. that would allow a third party to clearly identify the document. This is important because MMS must identify cases where two sides of an exchange are reported so that the information will not be used twice. The contract number will also aid MMS later in the event that these contracts are audited.

3. **Contract Term:** Fill in the date the contract started (**Effective Date**) and its **Initial term** in months. Check the expiration term that applies to this contract -- either **month-to-month extensions** or **fixed duration**. (*Note: for contracts that are* ***month-to-month extensions****, if the same contract is in effect as when the last report was filed, you do not need to fill out the rest of the form; just check* ***(no change)*** *and sign the bottom portion of the form*).

4. **Exchange Pair:** You need to report information on oil exchanges between **aggregation points** and **market centers**. Clearly identify the **aggregation point** and **market center** involved (refer to the MMS listing of **aggregation point** and **market center** pairings published in the Federal Register). You will be either reporting on oil you transferred at an **aggregation point** in exchange for oil you received at a **market center** (case A) or on oil you gave up at a **market center** in exchange for oil you received at an **aggregation point** (case B). For **in/out transportation exchanges**, only the company who is contracting for the transportation exchange will need to report the exchange. For other exchanges, both parties may be required to report on the exchange if they are both Federal lessees and if both volumes of oil in the exchange involve oil from Federal leases.

5. **Volume Terms:** First, fill in the volume in barrels per day of oil you transferred. If the contract states that **all available** oil will be taken, write in the estimated barrels per day of oil provided and make any handwritten clarifications you believe appropriate. Otherwise, write in the **fixed** volume you transferred as specified in the contract Next, fill in the barrels of oil you received under the terms of the exchange contract. If the contract states that **all available** oil will be taken, write in the estimated barrels per day of oil received together with any needed handwritten explanations. Otherwise, write in the **fixed** volume you received as specified in the contract.

6. **Exchange Differentials:** This section requests information about the differential received or paid by you under the exchange agreement. If your purpose under the exchange was to transport your oil on the other party's pipeline, the payment will reflect the cost of service to transport your oil. Any adjustments that were made to reflect gravity or sulfur content of your oil will be addressed in the next section.

Step-by-Step Instructions for Form MMS-4415

In cases where oil was exchanged between the two parties to the exchange contract, there may be a differential paid by the party whose oil is considered to be worth less than the other oil. This may be a result of differences in location, or quality differences between the oils that effect the value of the oil in the refining process.

Write the total of any differential payment you received or the total of any differential payment you made under the exchange agreement in the space provided.

7. **Quality Information and Adjustments:** This section requests information about the quality of oil involved in the exchange and about any adjustments to value that are part of the exchange agreement. The value of the oil you transferred in an exchange or transportation agreement may have been different than the value of the oil you received. To the extent that this difference is due to gravity or sulfur content, identify these value components.

API Gravity: If your exchange agreement references **actual** gravity of the oil you transferred, write the gravity to the nearest tenth of a degree in the space provided. Or, if the gravity is **deemed**, write the deemed API gravity to the nearest tenth of a degree in the space provided.

If this is an exchange for purposes of transporting oil on a pipeline, and you received a credit for oil you put into the pipeline because the gravity of your oil was higher than the oil you ultimately received at the other end of the pipeline, write the amount of the gravity credit you received in the space provided. If you paid a gravity penalty because the gravity of the oil you put into the pipeline made it worth less than the gravity of the oil you received at the other end of the pipeline, write that amount in the space provided (note whether a pipeline gravity bank was applied).

In other types of exchanges where there is reference to a gravity adjustment figure, write the amount you received or paid in the appropriate space provided.

If the contract does not include any reference to a gravity adjustment, place a check in the space provided and leave the gravity adjustment figure spaces blank.

Sulfur Content and Adjustment: If your exchange agreement references the **actual** sulfur content of the oil you transferred, write the **actual** sulfur content to the nearest tenth of a percent. If the sulfur content is **deemed**, write the **deemed** sulfur content to the nearest tenth of a percent in the space provided. If the **actual** sulfur content of the oil you receive in the exchange is referenced in the contract, write that content to the nearest tenth of a percent in the space provided. If the sulfur content of the oil you receive is **deemed**, write that content in the space provided.

Step-by-Step Instructions for Form MMS-4415

If this is an exchange for purposes of transporting oil on a pipeline, and you received a credit for oil you put into a pipeline because the sulfur content of your oil was lower than the oil you ultimately received at the other end of the pipeline, write the amount of the sulfur credit you received in the space provided. If you paid a penalty because the sulfur content of the oil you put into the pipeline was higher than the oil you received at the other end of the pipeline, write that amount in the space provided (note whether pipeline gravity schedules were applied).

In other types of exchanges, where there is a reference to a sulfur content adjustment figure, write the amount you received or paid in the appropriate space provided. Add any handwritten explanations needed.

If the contract does not include any reference to a sulfur adjustment, place a check in the space provided and leave the sulfur adjustment figure spaces blank.

If your exchange contract specifies any other value adjustments due to oil quality components other than gravity or sulfur content, identify the quality component in the space provided along with any credit received or penalty you paid. If there is insufficient space provided, use the back of this form to provide this additional information.

Certification: Check whether you received any other consideration for this oil. If you check "yes" provide an explanation. Use the back of this form to provide this explanation if additional space is required to adequately respond.

Authorized Signature: The form must be signed and dated by a person who has authority to represent the company.

Form Preparer: Please write the name of the individual who completed the form and a phone number where that person can be reached during normal business hours.

BILLING CODE 4310–MR–C

State	Station location	County/offshore location
	Aggregation Points for Saint James, & Empire, Louisiana	
LA	Conoco Jct	Calcasieu
LA	Lake Charles	Calcasieu.
LA	Texaco Jct	Calcasieu.
LA	Grand Chenier Term	Cameron.
LA	Grand Isle	Jefferson.
LA	Bay Marchand Term	Lafourche.
LA	Bayou Fourchon	Lafourche.
LA	Clovelly	Lafourche.
LA	Fourchon Terminal	Lafourche.
LA	Golden Meadow	Lafourche.
LA	Blk. 55	Offshore—South Pass.
LA	Blk. 13 (Wesco P.L. Subsea Tie-in)	Offshore—South Pelto.
LA	Blk. 172 Plat. D	Offshore—South Timbalier.
LA	Blk. 196 (Exxon P.L. System Tie-in)	Offshore—South Timbalier.
LA	Blk. 300	Offshore—South Timbalier.
LA	Blk. 35 Platform D.	Offshore—South Timbalier.
LA	Blk. 52 Plat. A	Offshore—South Timbalier.
LA	Blk. 30	Offshore—West Delta.
LA	Blk. 53	Offshore—West Delta.
LA	Blk. 53 Plat. B	Offshore—West Delta.
LA	Blk. 53B—Chevron P.L	Offshore—West Delta.
LA	Blk. 53B. Plat. Gulf Refining Co	Offshore—West Delta.
LA	Blk. 83	Offshore—West Delta.
LA	Blk. 28 Tie-in	Offshore—East Cameron.
LA	Blk 337 Subsea tie-in	Offshore–Eugene Island.
LA	Blk. 188 A Structure	Offshore—Eugene Island.
LA	Blk. 23	Offshore—Eugene Island.
LA	Blk. 259	Offshore—Eugene Island.
LA	Blk. 316	Offshore—Eugene Island.
LA	Blk. 361	Offshore—Eugene Island.
LA	Blk. 51 B Platform	Offshore—Eugene Island.
LA	Texas P.L. Subsea Tie-in	Offshore—Eugene Island.
LA	Blk. 17	Offshore—Grand Isle.
LA	Blk 69 B Plat	Offshore—Main Pass.
LA	Blk. 144 Structure A	Offshore—Main Pass.
LA	Blk. 298 Plat. A	Offshore—Main Pass.
LA	Blk. 299 Platform	Offshore—Main Pass.
LA	Blk. 42—Chevron P. L	Offshore—Main Pass.
LA	Blk. 42L	Offshore—Main Pass.
LA	Blk. 77 (Pompano P.L. Jct.)	Offshore—Main Pass.
LA	Blk. 169	Offshore—Ship Shoal.
LA	Blk. 203—Subsea Tie-in	Offshore—Ship Shoal.
LA	Blk. 208	Offshore—Ship Shoal.
LA	Blk. 208 B Structure	Offshore—Ship Shoal.
LA	Blk. 208 F	Offshore—Ship Shoal.
LA	Blk. 28	Offshore—Ship Shoal.
LA	Blk.154	Offshore—Ship Shoal.
LA	Ship Shoal Area	Offshore—Ship Shoal.
LA	Blk. 255	Offshore—Vermilion.
LA	Blk. 265 Platform A.	Offshore—Vermilion.
LA	Blk. 350	Offshore—Vermilion.
LA	Main Pass	Plaquemines.
LA	Main Pass Blk. 69—	Plaquemines.
LA	Ostrica Term.	Plaquemines.
LA	Pelican Island	Plaquemines.
LA	Pilottown	Plaquemines.
LA	Romere Pass	Plaquemines.
LA	South Pass Blk. 24	Plaquemines.
LA	South Pass Blk. 24 Onshore Plat	Plaquemines.
LA	South Pass Blk. 27 Onshore Facility	Plaquemines.
LA	South Pass Blk. 60A	Plaquemines.
LA	Southwest Pass Sta.	Plaquemines.
LA	West Delta Blk. 53	Plaquemines.
LA	Blk. 10—Structure A	Offshore—South Marsh Island.
LA	Blk. 139	Offshore—South Marsh Island.
LA	Blk. 139 Subsea Tap Valve	Offshore—South Marsh Island.
LA	Blk. 207—Light House Point A	Offshore—South Marsh Island.
LA	Blk. 268—Platform A	Offshore—South Marsh Island.
LA	Blk. 58A	Offshore—South Marsh Island.
LA	Blk. 6	Offshore—South Marsh Island.
LA	Chalmette	St. Bernard.
LA	Norco (Shell Refinery)	St. Charles.

State	Station location	County/offshore location
LA	Burns Term.	St. Mary.
LA	South Bend	St. Mary.
LA	Caillou Island	Terrebonne.
LA	Gibson Term.	Terrebonne.
LA	Erath	Offshore—Vermillion.
LA	Forked Island	Offshore—Vermillion.
LA	Anchorage	West Baton Rouge.
TX	Buccaneer Term.	Brazoria.
TX	Mont Belvieu	Chambers.
TX	Winnsboro	Franklin.
TX	Texas City	Galveston.
TX	Houston	Harris.
TX	Pasadena	Harris.
TX	Webster	Harris.
TX	Beaumont	Jefferson.
TX	Lucas	Jefferson.
TX	Nederland	Jefferson.
TX	Port Arthur	Jefferson.
TX	Port Neches	Jefferson.
TX	Sabine Pass	Jefferson.
TX	Corsicanna	Navarro.
TX	American Petrofina	Nueces.
TX	Corpus Christi	Nueces.
TX	Harbor Island	Nueces.
TX	Blk. 474—Intrsction. seg. III, III–7	Offshore—High Island.
TX	Blk. A—571	Offshore—High Island.
TX	End Segmennt III—10 (Blk. 547)	Offshore—High Island.
TX	End Segment II	Offshore—High Island.
TX	End Segment III—10	Offshore—High Island.
TX	End Segment III—6	Offshore—High Island.
TX	Rufugio Sta.	Rufugio.
TX	Midway	San Patricio.
TX	South Bend	Young.

Aggregation Points for Alaska North Slope Valuation

CA	Coalinga	Fresno.
CA	Belridge	Kern.
CA	Fellows	Kern.
CA	Kelley	Kern.
CA	Lake	Kern.
CA	Leutholtz Jct	Kern.
CA	Midway	Kern.
CA	Pentland	Kern.
CA	Station 36–Kern River	Kern.
CA	Hynes Station	Los Angeles.
CA	Newhall	Los Angeles.
CA	Sunset	Los Angeles.
CA	Cadiz	San Bernadino.
CA	Avila	San Luis Obispo.
CA	Gaviota Terminal	Santa Barbara.
CA	Lompoc	Santa Barbara.
CA	Sisquoc Jct	Santa Barbara.
CA	Filmore	Ventura.
CA	Rincon	Ventura.
CA	Santa Paula	Ventura.
CA	Ventura	Ventura.
CA	Rio Bravo	County Unknown.
CA	Signa	County Unknown.
CA	Stewart	County Unknown.

Aggregation Points for Midland Texas

NM	Jal	Lea.
NM	Lovington	Lea.
NM	Ciniza	McKinley.
NM	Bisti Jct	San Juan.
NM	Navajo Jct	San Juan.
TX	Fullerton	Andrews.
TX	Crane	Crane.
TX	Caproch Jct	Ector.
TX	Odessa	Ector.
TX	North Cowden	Ector.
TX	Wheeler	Ector.

State	Station location	County/offshore location
TX	El Paso	El Paso.
TX	Roberts	Glasscock.
TX	Big Spring	Howard.
TX	Phillips Hutchinson	Howard.
TX	McKee	Moore.
TX	Beaver Station	Ochiltree.
TX	Kemper	Reagan.
TX	Mason Jct	Reeves.
TX	Eldorado	Scheicher.
TX	Basin Station	Scurry.
TX	Colorado City	Scurry.
TX	McCamey	Upton.
TX	Mesa Sta	Upton.
TX	Halley	Winkler.
TX	Hendrick/Hedrick-Wink	Winkler.
TX	Keystone	Winkler.
TX	Wink	Winkler.
	Aggregation Points for Cushing Oklahoma.	
CO	Denver	Adams.
CO	Cheyenne Wells Station	Cheyenne.
CO	Iles	Moffat.
CO	Sterling	Logan.
CO	Fruita	Mesa.
CO	Rangley	Rio Blanca.
MT	Silver Tip Station	Carbon.
MT	Alzada	Carter.
MT	Richey Station	Dawson.
MT	Baker	Fallon.
MT	Cut Bank Station	Glacier.
MT	Bell Creek Station	Powder River.
MT	Clear Lake Sta	Sheridan.
MT	Poplar Station	Roosevelt.
MT	Billings	Yellowstone.
MT	Laurel	Yellowstone.
ND	Fryburg Station	Billiings.
ND	Tree Top Station	Billiings.
ND	Lignite	Burke.
ND	Alexander	McKenzie.
ND	Keene	McKenzie.
ND	Mandan	Morton.
ND	Tioga	Ramberg.
ND	Ramberg	Williams.
ND	Thunderbird Refinery	Williams.
ND	Tioga	Williams.
ND	Trenton	Williams.
ND	Killdear	County Unknown.
UT	Salt Lake Station	Davis.
UT	Woods Cross	Davis.
UT	Salt Lake City	Salt Lake.
UT	Aneth	San Juan.
UT	Patterson Canyon Jct	San Juan.
UT	Bonanza Station	Uintah.
UT	Red Wash Station	Uintah.
WY	Byron	Big Horn.
WY	Central Hilight Sta	Cambell.
WY	Rocky Point	Cambell.
WY	Rozet	Cambell.
WY	Sinclair	Carbon.
WY	Big Muddy Sta	Converse.
WY	Pilot Butte Sta	Freemont.
WY	Cottonwood Jct	Hot Springs.
WY	Crawford Sta	Johnson.
WY	Reno	Johnson.
WY	Sussex	Johnson.
WY	Cheyenne	Laramie.
WY	Casper	Natrona.
WY	Noches	Natrona.
WY	Lance Creek Station	Niobrara.
WY	Frannie Sta	Park.
WY	Oregon Basin Sta	Park.
WY	Guersey	Platte.
WY	Wamsutter Sta	Sweetwater.

State	Station location	County/offshore location
WY	Bridger Station	Uinta.
WY	Divide Junction	Uinta.
WY	Evanston Sta	Uinta.
WY	Chatham Sta	Washakie.
WY	Butte Sta	Weston.
WY	Mush Creek Jct	Weston.
WY	Osage Station	Weston.

[FR Doc. 98–2704 Filed 2–5–98; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01–97–014]

RIN 2115–AA98

Special Anchorage Area: Groton, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to extend the boundaries of the special anchorage area currently existing off Groton, Connecticut, between Pine Island and Avery Point. This action is taken at the request of the City of Groton, and is intended to make space available within the special anchorage area for approximately 20 additional moorings.

DATES: Comments must be received on or before April 7, 1998.

ADDRESSES: Comments may be mailed to Commander, Aids to Navigation Branch, First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts 02110–3350.

FOR FURTHER INFORMATION CONTACT: LT Matthew Stuck, Aids to Navigation Branch, First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts 02110–3350, (617) 223–8347.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–97–014) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Comments should be submitted to the address under **ADDRESSES**.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Signals Management Section at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Proposed Rules

The proposed rule is in response to a request made by the City of Groton to accommodate the increased number of vessels mooring in this area. The proposed rule would expand the existing special anchorage near Groton, Connecticut, described in 33 CFR 110.51, to allow its use by approximately 20 additional boats. Vessels not more than 65 feet in length when at anchor in any special anchorage shall not be required to carry or exhibit the white anchor lights required by the Navigation Rules. The proposed rule would provide approximately twenty additional moorings in which vessel owners may enjoy the convenience of a special anchorage. The existing anchorage, located near Pine Island and Avery Point, is split into two areas by a 210-foot wide fairway channel. The proposed change would reduce the width of the existing fairway to approximately 135 feet and extend the western boundary of the southern section of the anchorage by 75 feet. The note following section 33 CFR 110.51 would be updated to indicate the decrease in fairway channel width.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. No person will be required to spend any money in order to comply with this regulation. The proposed regulation will exempt persons operating in the expanded area from complying with the more stringent vessel lighting regulations they would ordinarily be obliged to follow.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard expects that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant

the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under Section 2.B.2.e. of Coast Guard Commandant Instruction M16475.1B that this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' and Environmental Analysis Checklist are available in the docket for inspection and copying where indicated under **ADDRESSES** in this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.51, is revised to read as follows:

§ 110.51 Groton, Conn.

The waters between an unnamed cove and Pine Island.

(a) Beginning at a point on the shoreline of Avery Point at a latitude 41°19′01.4″, longitude 072°03′42.8″; thence to a point in the cove at latitude 41°19′02.5″, longitude 72°03′36.2″ thence southeasterly to a point at latitude 41°18′56.2″, longitude 072°03′34.2″; thence northeasterly to latitude 41°19′02.5″, longitude 072°03′19.2″; thence terminating at the tip of Jupiter Point at latitude 41°19′04.4″, longitude 072°03′19.7″. DATUM: NAD 83

(b) Beginning at a point on the shoreline of Pine Island at latitude 41°18′47.1″, longitude 072°03′36.8″; thence northerly to latitude 41°18′54.1″, longitude 072°03′35.4″; thence northeasterly to a point at latitude 41°19′01.2″, longitude 072°03′19.3″; thence terminating at a point at latitude 41°18′54.0″, longitude 072°03′17.5″. DATUM: NAD 83

Note: The areas designated by (a) and (b) are principally for the use of recreational vessels. Vessels shall be anchored so that no part of the vessel obstructs the 135 foot wide channel. Temporary floats or buoys for marking the location of the anchor of a vessel at anchor may be used. Fixed mooring pilings or stakes are prohibited.

Dated: December 19, 1997.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 98–2983 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP SAN JUAN 97–045]

RIN 2115–AA97

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent moving safety zone around Liquefied Petroleum Gas (LPG) ships transiting the waters of San Juan Harbor, San Juan, Puerto Rico. These regulations are needed to protect all vessels and the public from the safety hazards associated with the arrival and departure of LPG ships making port calls. During arrival and departure, these types of vessels use the Bar, Anegado and Army Terminal Channels. Due to their highly volatile cargoes, size, draft, and channel restrictions, LPG ships require use of the center of these channels for safe navigation and to promote the safety of life on the navigable waters.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Commanding Officer, Marine Safety Office San Juan, P.O. Box 9023666, Old San Juan, Puerto Rico 00902–3666. The telephone number is (787) 729–6800, extension 308 or 305. Comments will become part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LT Christopher K. Palmer, project officer, USCG Marine Safety Office San Juan, (787) 729–6800 x320.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking (COTP San Juan–97–045) and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to LT Palmer at the address under **ADDRESSES**. The request should include why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters during the arrival and departure of LPG ships in San Juan Harbor, San Juan, Puerto Rico. These moving safety zones are necessary because of the significant risks associated with LPG ships due to their highly volatile cargoes, their size, draft, and channel restrictions. Historically, the Coast Guard has established a moving safety zone each time a LPG ship transits the waters of San Juan Harbor. Given the recurring nature of these port calls, and the dangers associated with LPG ships, the Coast Guard is establishing a permanent moving safety zone around these vessels during their arrival and departure from San Juan Harbor, San Juan, Puerto Rico.

The safety zone will be established in an area one half mile around LPG ships entering or departing San Juan Harbor, The safety zone will be established for a period commencing when the vessel is one mile north of San Juan Harbor #1 Sea Buoy, and will cease once the vessel is moored at either the Gulf Refinery Oil dock or the Catano Oil dock. The Coast Guard will assign a patrol, issue a Broadcast Notice to Mariners to advise mariners, and advise the San Juan Port Control of the established safety zone in advance of the LPG ships arrival and departure. This safety zone will be effective only during the time indicated in the Broadcast Notice to Mariners.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard

expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the limited duration of the moving safety zone, the extensive advisories that will be made to the affected maritime community and the minimal restrictions the regulations will place on vessel traffic. These regulations will be in effect for a total of approximately three hours per port call for these vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities, as the regulations would only be in effect approximately one day each week for three hours in a limited area of San Juan Harbor.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded under paragraph 2.B.2.e(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), that this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend subpart C of part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new section 165.754 is added to read as follows:

§ 165.754 Safety Zone: San Juan Harbor, San Juan, PR.

(a) *Regulated Area.* A moving safety zone is established in the following area:

(1) The waters around Liquefied Petroleum Gas ships entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18–29.3N, 66–07.6W and continuing until the vessel is safely moored at either the Gulf Refinery Oil dock or the Catano Oil dock in approximate position 18–25.8N, 66–06.5W. All coordinates referenced use datum: NAD 83.

(2) The waters around Liquefied Petroleum Gas ships departing San Juan Harbor in an area one half mile around each vessel beginning at either the Gulf Refinery Oil dock or Catano Oil dock in approximate position 18–25.8N, 66–06.5W, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18–28.3N, 66–07.6W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.* (1) No person or vessel may enter, transmit or remain in the safety zone unless authorized by the Captain of the Port, San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. (2) Vessels encountering emergencies which require transit through the moving safety zone should contact the Coast Guard patrol craft on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(3) The Captain of the Port and the Duty Officer at Marine Safety Office, San Juan, Puerto Rico, can be contacted at telephone number (787) 729–6800 ext. 300. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF–FM channels 16 and 22A.

(4) The Marine Safety Office San Juan will notify the marine community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures of Liquefied Petroleum Gas vessels via a marine broadcast Notice to Mariners.

(5) Should the actual time of entry of the Liquefied Petroleum Gas vessel vary more than one half hour from the scheduled time stated in the broadcast Notice to Mariners, the person directing the movement of the Liquefied Petroleum Gas vessel shall obtain permission from Captain of the Port San Juan before commencing the transit.

(6) All persons and vessels shall comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: November 24, 1997.

B.M. Salerno,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, PR.

[FR Doc. 98–2985 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0040b; FRL–5957–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District; Monterey Bay Unified Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action revises the definition of volatile organic compound (VOC) and updates the exempt compound list in rules from Kern County Air Pollution Control District (KCAPCD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Ventura County Air Pollution Control District (VCAPCD).

The intended effect of proposing approval of these rules is to incorporate

into the SIP definition changes in the districts' rules to be consistent with revised federal definitions. EPA is proposing approval of these revisions for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views these changes as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 9, 1998.

ADDRESSES: Written comments on this action should be addressed to: Christine Vineyard, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the revised rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 290, Bakersfield, CA 93301.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air-4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

This document concerns Kern County Air Pollution Control District (KCAPCD) Rule 410.1, Architectural Coatings; Rule 410.5, Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations; Rule 411, Storage of Organic Chemicals; Rule 414.5, Pump and Compressor Seals at Petroleum Refineries and Chemical Plants; Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 101, Definitions; and Ventura County Air Pollution Control District (VCAPCD) Rule 2, Definitions. KCAPCD Rules 410.1, 410.5, 411, and 414.5 were submitted to EPA on May 10, 1996; MBUAPCD Rule 101 was submitted to EPA on March 3, 1997; and VCAPCD Rule 2 was submitted on July 23, 1996 by the California Air Resources Board (CARB). For further information, please see the information provided in the Direct Final action that is located in the Final Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 15, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–2872 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–7, RM–9211]

Radio Broadcasting Services; Roxton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lake Broadcasting, Inc. requesting the allotment of Channel 274A to Roxton, Texas, as the community's first local aural transmission service. Channel 274A can be allotted to Roxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 274A at Roxton are 33–35–18 NL and 95–40–27 WL.

DATES: Comments must be filed on or before March 23, 1998, and reply comments on or before April 7, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William Harrison, President, Lake Broadcasting, Inc., 101 East Main, Suite 255, Denison, Texas 75020 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–7, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2989 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Richard J. Shaw to specify the design and method of closure for gas caps on motor vehicles. The petition provided insufficient information to support petitioner's contention that fuel spillage and vapor release represent a safety problem that requires regulation. Available crash data do not demonstrate a safety problem with gas cap closure.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Dr. William J.J. Liu, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 366–4923. Facsimile (202) 366–4329. For legal issues: Nicole Fradette, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 366–2992. Facsimile (202) 366-3820, electronic mail ''nicole.fradette@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION: By petition dated May 14, 1997, Mr. Richard J. Shaw petitioned the agency to issue a rule applicable to gas caps. The petitioner stated that the rulemaking was needed to prevent deaths, injuries, and environmental damage caused by improperly secured gas caps. He stated that crash fires and environmental pollution occur when improperly secured gas caps leak gasoline and gasoline vapors. The petitioner requested that NHTSA ''standardize gas caps and eliminate the problem completely.'' To ensure that gas caps are secured properly, the petitioner suggested the use of a robot or an electronic gas cap wrench at filling stations.

To promulgate or amend a vehicle safety requirement, NHTSA must decide, on the basis of data and analysis, that a safety problem exists and that the requirement would reduce the problem and thus meet the need for motor vehicle safety. In this instance, NHTSA has found no basis for concluding that there is a safety problem with gas caps. Although the petitioner cited some crash data on post-collision vehicle fires, he did not demonstrate a causal connection between the fires and an improperly sealed gas cap. The petitioner did not provide information showing that improper gas cap use or design contributes to motor vehicle fires, nor is NHTSA aware of any information from other sources demonstrating such a problem. In the research now underway relating to a possible upgrade of Federal Motor Vehicle Safety Standard No. 301, ''Fuel System Integrity'' (49 CFR 571.301), the data collected from vehicle crash fires do not show a connection between gas cap performance and vehicle fires.

The agency notes that the specific solution suggested by the petitioner, requiring filling stations to install an electronic gas wrench, raises questions about the purview of NHTSA's statutory authority. NHTSA is authorized to regulate motor vehicles and items of motor vehicle equipment. In a September 16, 1994 letter to the Consumer Product Safety Commission, NHTSA determined that gasoline pump nozzle/hose assemblies (referred to in the letter as ''gas nozzles'') are not ''motor vehicle equipment'' within the meaning of NHTSA's implementing statute, in part because they are not purchased or otherwise acquired by ordinary users of motor vehicles. An electronic gas wrench installed at a filling station is similar to a gas nozzle with regard to the intended purchaser.

The petitioner also raised the issue of environmental damage caused by gasoline emissions. This issue is not germane to rulemaking under 49 U.S.C. Chapter 301, which is limited to matters of motor vehicle safety. Congress has delegated the authority to regulate emissions to the U.S. Environmental Protection Agency.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. After considering all relevant factors, the agency has decided to deny the petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on February 2, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2998 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–124–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Animal Welfare Act.

DATES: Comments on this notice must be received by April 7, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–124–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–124–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding the Animal Welfare Act, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0115.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: Regulations and standards have been promulgated to promote and ensure the humane handling, care, treatment, and transportation of regulated animals under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*). Title 9, part 3, subpart E, of the Code of Federal Regulations (the regulations) addresses specific standards for marine mammals.

With respect to the transportation of marine mammals, the regulations require that intermediate handlers and carriers only accept shipping enclosures that meet the minimum requirements set forth in the regulations (§ 3.113) or that are accompanied by documentation signed by the cosigner verifying that the shipping enclosures comply with the regulations. If marine mammals are to be transported in cargo space that falls below 45 °F (7.2 °C), regulations specify that the animals must be accompanied by a certificate of acclimation that has been signed by a United States Department of Agriculture (USDA) accredited veterinarian.

In addition, all shipping enclosures must be marked with the words ''Live Animals'' and have arrows indicating the correct upright position of the container. Intermediate handlers and carriers are required to attempt to contact the consignee at least once every 6 hours upon the arrival of any marine mammal. Documentation of these attempts must be recorded by the intermediate handlers and carriers and maintained for inspection by Animal and Plant Health Inspection Service (APHIS) personnel.

These reporting and recordkeeping requirements do not mandate the use of any official government form.

The regulations also require that all facilities holding marine mammals submit a contingency plan regarding emergency sources of water and electric power in the event of failure of the primary sources.

The regulations also require facilities to maintain water quality records to verify compliance with § 3.106, including information on coliform levels, salinity (if applicable), pH, and any chemical additives. To comply with § 3.110(d) and § 3.111(g)(6), complete necropsies must be conducted on any marine mammals that die at the facility and the records must be maintained at the facility.

APHIS needs the reports and records required by the regulations to enforce the regulations for marine mammals and ensure the humane treatment of these animals.

On January 23, 1995, we published a proposal (APHIS Docket No. 93–076–2, ''Animal Welfare; Marine Mammals,'' 60 FR 4383–4389) that would establish standards and recordkeeping requirements for facilities that operate a ''swim-with-the-dolphin'' (SWTD) program.

The reporting and recordkeeping requirements contained in APHIS Docket No. 93–076–2 were given preliminary approval by the Office of Management and Budget (OMB) under OMB control number 0579–0115. Although these requirements may change (a final rule has not yet been published), we are seeking a continuation of the preliminary approval.

The recordkeeping requirements proposed in Docket No. 93–076–2 would require that each facility operating an SWTD program submit written copies of the rules and instructions used in the introductory (classroom) session (proposed § 3.111(e)(4)), the procedures for terminating a session (proposed § 3.111(e)(7)), a description of the SWTD program (proposed § 3.111(f)(1)), and semiannual reports regarding participation in the program (proposed § 3.111(f)(5)).

Under the proposal, each facility would be required to maintain veterinary, feeding, and behavioral records for SWTD animals in order to comply with proposed §§ 3.111(f)(3) and (f)(4). Proposed §§ 3.111(g)(3) through (g)(5) would require that each facility maintain profile (animal identification) information, nutritional and reproductive status information, and a monthly written assessment by the

attending veterinarian. Proposed § 3.111(f)(6) would require that injuries sustained by dolphins or participants be reported to APHIS within 24 hours, with a written report required within 7 days.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .17666 hours per response.

Respondents: USDA licensed/registered marine mammal facility representatives.

Estimated number of respondents: 810.

Estimated annual number of responses per respondent: 48.94.

Estimated annual number of responses: 39,641.

Estimated total annual burden on respondents: 7,003 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3046 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–129–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Environmental Monitoring Form.

DATES: Comments on this notice must be received by April 7, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–129–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–129–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Environmental Monitoring Form, contact Mr. Ron Berger, Acting Deputy Director of Technical and Scientific Services, Biotechnology and Scientific Services, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737–1236, (301) 734–5105. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Environmental Monitoring Form.

OMB Number: 0579–0117.

Expiration Date of Approval: July 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) provides leadership in ensuring the health and welfare of animals and plants. The Agency attempts to carry out this mission in a manner that promotes and protects the environment.

In accordance with the National Environmental Policy Act (42 U.S.C. 4321) and the regulations that implement this act (contained in 40 CFR 1500–1508), APHIS engages in environmental monitoring for certain activities that we conduct to control or eradicate certain pests and diseases. Activities with the greatest potential for harm to the human environment and for which mitigation measures have been developed are monitored to ensure that the mitigation measures are enforced and effective. In many cases monitoring is required where APHIS programs are conducted close to habitats of endangered and threatened species. This monitoring is developed in coordination with the United States Department of the Interior, Fish and Wildlife Service, in compliance with the Endangered Species Act, 50 CFR 17.11 and 17.12.

APHIS Form 2060, Environmental Monitoring Form, is used by APHIS field personnel and State cooperators jointly, to collect information concerning the effects of pesticide use in the sensitive habitats. The goal of environmental monitoring is to track the potential impact that APHIS activities may have on the environment, and to use this knowledge in making any necessary adjustments in future program actions.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic,

mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Growers/appliers of pesticides, State Department of Agriculture personnel.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 300.

Estimated total annual burden on respondents: 150 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3047 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–130–1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Sugar Beet Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for sugar beet designated as Transformation Event T120–7, which has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this sugar beet presents a plant pest risk.

DATES: Written comments must be received on or before April 7, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–130–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–130–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 2, 1997, APHIS received a petition (APHIS Petition No. 97–336–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for sugar beet (*Beta vulgaris* L.) designated as Transformation Event T120–7 (event T120–7), which has been genetically engineered for tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject sugar beet should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, event T120–7 sugar beet has been genetically engineered to contain a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes.* The *pat* gene encodes the enzyme phosphinothricin acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *pat* gene is controlled by 35S promoter and terminator sequences derived from the plant pathogen cauliflower mosaic virus. Event T120–7 sugar beet also contains the *aph(3')II* or *nptII* marker gene used in plant transformation. Expression of the *nptII* gene is controlled by gene sequences derived from the plant pathogen *Agrobacterium tumefaciens,* and analysis indicates that the NPTII protein is expressed in certain parts of the subject plants. The *A. tumefaciens* method was used to transfer the added genes into the parental sugar beet line.

Event T120–7 sugar beet has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. The subject sugar beet has been field tested in the U.S. since 1994 under APHIS permits. In the process of reviewing the permit applications for field trials of this sugar beet, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. Accordingly, a submission has been made to EPA for registration of the herbicide glufosinate for use on sugar beet. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. AgrEvo has begun consultation with FDA on the subject sugar beet.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's event T120–7 sugar beet and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3048 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Young'n Timber Sales, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposed Action to harvest and regenerate timber, and thin young stands created by past regeneration harvest. This EIS was triggered during an environmental analysis (EA) which discovered a potential for significant impacts as defined under NEPA 1508.27. The proposed action also calls for the construction, reconstruction, decommissioning of roads, restoration of degraded stream channels, improvement of big game forage, and other habitat restoration projects within the Middle Fork drainage of the Willamette River watershed. The planning area is bisected by the Middle Fork of the Willamette River. The west side of the planning area is bounded by Forest Road 5850, Forest Road 2125 forms the south boundary, and Snow Creek forms the north boundary. On the east side of the planning area, Warner Mountain, Logger Butte, and Joe's Prairie border the east and north side of the planning area, and the Young's Rock Trail borders the southern end of the planning area. The area is approximately 57 air miles southeast of the City of Eugene and 12 air miles south of the City of Oakridge. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan as amended by the 1994 Northwest Forest Plan, which provides the overall guidance for management of this area. These proposals are tentatively planned for implementation in fiscal years 1999–2001.

The Willamette National Forest invites written comments and suggestions on the scope of the analysis in addition to those comments already received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by March 1, 1998.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Rick Scott, District Ranger, Rigdon Ranger District, Willamette National Forest, P.O. Box 1410, Oakridge, Oregon 97463.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the scope of analysis to Kristie Miller, Planning Resource Management Assistant or John Agar, Project Coordinator, Rigdon Ranger District, phone 541–782–2283.

SUPPLEMENTARY INFORMATION: The Young'n Planning area is entirely within the Middle Fork of the Willamette River watershed. A Watershed Analysis was completed for the Middle Fork of the Willamette River in August, 1995, titled; the Middle Fork Willamette River Downstream Tributaries Watershed Analysis Report.

The purpose of this project is to harvest timber in a manner that implements the Forest Plan management objectives and Watershed Analysis recommendations.

The proposal includes harvesting timber in four to five separate timber sales, over the next three years. Up to four sales would involve regeneration harvest and one sale would involve commercial thinning. Both thinning and regeneration harvest timber sale proposals would involve road construction, reconstruction, and decommissioning. This analysis will evaluate a range of alternatives addressing the Forest Service proposals to harvest approximately 20.5 million board feet; approximately 1.1 million board feet would be generated from thinning some 218 acres of young managed stands created by past clearcut harvest, and approximately 19.4 million board feet would be generated by regeneration harvest on approximately 580 acres. All the above proposed harvest would require a total of 2.7 miles of temporary road construction and 40 miles of road reconstruction.

The Young'n planning area comprises about 38,000 acres; of this total, 4,122 (11%) acres are private land. Of the 33,878 acres of Forest Service land, about 15,313 acres (45%) have been previously harvested and regenerated. Of the remaining acres, approximately 1,850 (5.4%) acres is in a mature stand condition, ranging in ages from 70 to 170 years, and 16,700 acres is in an old-growth stand condition, stand ages exceeding 200 years. The planning area contains about 1,536 acres (4%) of non-forested vegetation types and rock outcrops. Management areas that provide for programmed timber harvest are Scenic (11a, 11c, 11d) and General Forest (14a). Other land allocations in this planning area are Late-Successional Reserves (16A, 16B), Riparian Reserves (15A), Wild and Scenic River Corridor, and the Moon Point Special Interest Area (5A).

The project area does not include any inventoried roadless area.

Preliminary issues identified in this analysis are potential impacts to habitat of plant and animal communities, landscape connectivity and wildlife dispersal corridors, watershed restoration opportunities, cumulative watershed effects, scenic quality along the Middle Fork of the Willamette River, forest growth and yield, and economics.

Scoping was initiated again in April of 1996. Alternatives were developed and preliminary analysis was completed during the summer and fall of 1997. The developed alternatives consisted of: (A) optimization of growth and yield while meeting Forest Plan Standard and Guidelines Thresholds, (B) conservation of habitat while exceeding current Forest Plan Standard and Guidelines (C) blend alternative; optimization of growth and yield and conserve the most functional habitats while meeting Forest Plan Standard and Guidelines (D) No Action. Alternative A would treat 902 acres and generate 24.5 MMBF of timber volume, Alternative B would treat 709 acres and generate 18.1 MMBF of timber volume, Alternative C would treat 790 acres and generate 20.5 MMBF of timber volume, and Alternative D No Action would defer harvest in this planning area. All action alternatives were developed to avoid forest fragmentation and system road construction. Results of the above actions, documented in an environmental analysis, indicated a potential for significant effects to the human environment, hence the need for documentation with an Environmental Impact Statement.

The Forest Service will be seeking additional information, comments and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested or affected by the proposed project. Additional input will be used to help verify the existing analysis and determine if additional issues and alternatives should be developed. This input will be used in preparation of the draft EIS.

The scoping process will include the following:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of additional alternatives based on the issues identified during the scoping process; and
- Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March, 1998. The comment period on the draft EIS will be for a 45 day period, following the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled to be completed in June, 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Rick Scott, District Ranger, is the responsible official and as responsible official, he will document the Young'n Timber Sales and connected actions and rational in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: January 28, 1998.

Rick Scott,

District Ranger.

[FR Doc. 98–2975 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Addition of Routine Use to Privacy Act Systems of Records

AGENCY: Assassination Records Review Board.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the the Privacy Act of 1974, 5 U.S.C. 552a(e)(11), the Assassination Records Review Board is issuing notice of our intent to amend the systems of records entitled the Personnel Files (ARRB–9) and the Time and Attendance Files (ARRB–14) to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104–193. We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by March 9, 1998.

Effective date: The proposed routine use will become effective as proposed without further notice on March 9, 1998, unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to Laura Denk, Assassination Records Review Board, 600 E Street, NW., Second Floor, Washington, DC 20530, (202) 724–0457 (facsimile), or via electronic mail: Laura__Denk@jfk-arrb.gov.

FOR FURTHER INFORMATION CONTACT: Laura Denk, Assassination Records Review Board, 600 E Street, NW., Second Floor, Washington, DC 20530, (202) 724-0088 (voice), (202) 724–0457 (facsimile), Laura__Denk@jfk-arrb.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, the Assassination Records Review Board will disclose data from its Personnel Records and its Time and Attendance Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51,663 (1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and security support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the Assassination Records Review Board, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each Assassination Records Review Board employee, within one month of the quarterly reporting period.

Information submitted by the Assassination Records Review Board to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the Assassination Records Review Board to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Assassination Records Review Board's Notice of Systems of Records (ARRB–9 and ARRB–14) originally published at 60 FR 64,143 (1995) is amended by addition of the following routine use:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104–193.

Dated: December 30, 1997.

Laura Denk,

Freedom of Information Act Officer/Privacy Act, Assassination Records Review Board.

[FR Doc. 98–2950 Filed 2–5–98; 8:45 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 9, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance, S.E. Army Reserve Intelligence Center, Building 839, Fort Gillem, Georgia, NPA: WORKTEC, Jonesboro, Georgia
Janitorial/Custodial, Greensburg AMSA 104, Greensburg, Pennsylvania, NPA: Rehabilitation Center and Workshop, Greensburg, Pennsylvania
Janitorial/Custodial, OCIE Warehouse, Latrobe, Pennsylvania, NPA: Rehabilitation Center and Workshop, Greensburg, Pennsylvania

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Bag, Paper, Grocer's

8105–00–281–1158
8105–00–281–1163
8105–00–281–1425
8105–00–271–1485
8105–00–286–7308
8105–00–281–1156
8105–00–281–1429
8105–00–579–9161
8105–00–022–1319
8105–00–543–7169
8105–00–262–7363
8105–00–130–4586

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–2973 Filed 2–5–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 9, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gteway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 28, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (62 FR 63314) of proposed additions to the Procurement List.

The following comments pertain to Janitorial/Custodial, Front Royal, Virginia: Comments were received from the current contractor in response to a sales data request. The contractor noted that cleaning the Canine Enforcement Training Center is a very challenging job which requires an aggressive service schedule. The contractor also noted that all its employees need the work and hope to be allowed to continue doing it.

The nonprofit agency which will be cleaning the Center has been found capable of doing so based in part on the contracting officer's statement that he is aware of the agency's performance and management capability based on its other Federal work in the area, made in connection with a waiver of the contracting activity's opportunity to conduct a capability survey of the nonprofit agency. The Committee is confident the nonprofit agency will be able to perform all the requirements of cleaning the Center in a thoroughly acceptable manner.

The contractor's employees are not the only ones who need the work. Putting this service on the Procurement List will allow workers with severe disabilities, who have an unemployment rate far above that of nondisabled workers, to be gainfully employed.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and service.
3. The action will result in authorizing small entities to furnish the commodities and service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Gloves
M.R. 509
M.R. 415
M.R. 416
M.R. 417
M.R. 418
M.R. 514
M.R. 515

Service

Janitorial/Custodial, U.S. Customs Service, Canine Enforcement Training Center (Various Buildings), Front Royal, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–2974 Filed 2–5–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on Thursday, February 19, 1998, at the Fountain Grove Inn, 101 Fountaingrove Parkway, Santa Rosa, California 95403. The purpose of the meeting is to hold a briefing session for Committee members regarding Commission factfinding

procedures and to review the list of scheduled participants for the February 20, 1998, meeting. The Committee will reconvene at 8:30 a.m. and adjourn at 5:00 p.m. on Friday, February 20, 1998, at the Justice Joseph A. Rattigan State Building, 50 ''D'' Street, Conference Room 410, Santa Rosa, California 95404. The purpose of the meeting is to receive testimony from community representatives, State, Federal and local officials, and other individuals on police community relations in Sonoma County.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 23, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–2954 Filed 2–5–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 12:45 p.m. and adjourn 4:45 p.m. on Thursday, February 19, 1998, at the JC Penney, Government Relations Office, Board Room, Suite 1015, 1156 15th Street, NW, Washington, DC 20036. The Advisory Committee will receive updates from its subcommittees and continue planning its next project for FY 1998.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Steven Sims, 202–862–4815, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–2956 Filed 2–5–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Tuesday, February 17, 1998, at the Clarion Townhouse, 1615 Gervais Street, Columbia SC 29201. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–2955 Filed 2–5–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Encryption will be held February 23, 1998, 2 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration commercial encryption policy.
4. Discussion of task force development and work plan.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S export control program and strategic criteria related thereto.

A Notice of determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved July 21, 1997, in accordance with the Federal Advisory Committee Act. A copy of notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: February 3, 1998.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–3001 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Stainless Steel Pipe From Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: In response to a request by SeAH Steel Corporation (SeAH), the Department of Commerce (the Department) is conducting a changed circumstances review to examine whether SeAH is the successor to Pusan Steel Pipe (PSP). As a result of this review, the Department preliminarily finds that SeAH is the successor to PSP, and should be assigned the antidumping deposit rate applicable to PSP.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano, Elisabeth Urfer, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1997, SeAH requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act) to determine whether SeAH should properly be considered the successor firm to PSP and if, as such, SeAH should be entitled to PSP's cash deposit rate. We published a notice of initiation of a changed circumstances review on June 11, 1997 (62 FR 31789) to examine whether SeAH is the successor to PSP. The Department is conducting this changed circumstances review in accordance with 19 CFR 353.22(f).

Scope of Review

Imports covered by the review are shipments of welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications of the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of this order also includes WSSP made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this review is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

This changed circumstances administrative review covers SeAH and any parties affiliated with SeAH.

Verification

As provided in section 782(i) of the Act, we verified information provided by SeAH using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Successorship

According to SeAH, PSP legally changed its name to SeAH on December 28, 1995, which change became effective on January 1, 1996. SeAH claims that its name change from PSP was a change in name only, and that the legal structure of the company, its management, and ownership were not affected by the name change. SeAH also claims that it is a part of a larger group of related companies, certain members of which had SeAH in their names prior to January 1, 1996.

In its request for a changed circumstances review, SeAH indicated that PSP had acquired certain production assets formerly owned by Sammi Metal Products Co. (Sammi). SeAH asserts that the acquisition, which occurred more than a year before the name change and was effective January 3, 1995, is not related to the name change. SeAH claims that its acquisition of the products and facilities of Sammi is functionally no different from PSP expanding its existing facilities or contracting a new manufacturing facility.

Based on the information submitted by SeAH, petitioner has argued that SeAH is the successor to Sammi.

In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in (1) management, (2) production facilities, (3) suppliers, and (4) customer base. (See, *e.g.*, Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, (57 FR 20460; May 13, 1992); Steel Wire Strand for Prestressed Concrete from Japan; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, (55 FR 7759; March 5, 1990); and Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review (59 FR 6944, February 14, 1994).) While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be a successor to a second if its resulting operation is essentially the same as that of its predecessor. (See Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, (55 FR 20460; May 13, 1992).) Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity, the Department will assign the new company the cash deposit rate of its predecessor.

The record in this review, as demonstrated by the following factors, indicates that SeAH is the successor to PSP for the production of subject merchandise, and is not a successor to Sammi.

(1) Management

All of the managers of the Changwon plant were transferred from PSP plants. One manager was transferred from the Pohang plant, one was transferred from the Seoul Head Office and the others were transferred from the Seoul plant. The manager and assistant manager of the Stainless Steel Pipe Production Team at the Changwon plant had worked for Sammi in the past, but this was prior to 1989, six years before PSP purchased the Changwon facility. The headquarters for the sales and marketing division remained at the head office in Seoul, and very little change occurred with respect to the individuals holding these management positions. None of Sammi's 1994 board of directors appear on SeAH's board of directors.

Currently, there are three team managers and one general manager at the Changwon plant. This management structure closely resembles the management structure in 1995 (before the name change). With respect to the executive management of PSP, the majority retained their positions after the name change to SeAH, although several top executives were transferred to or from related entities. SeAH's chart of its board of directors indicates that the Chairman & CEO, President & COO, Vice President, and four of six directors remain the same.

(2) Production Facilities

The purchase of the Changwon facility only involved physical assets. This was verified by a review of the contract for sale of the Changwon plant by Sammi to PSP. After purchasing the Changwon plant, PSP reconfigured and overhauled the plant. It moved

machinery and equipment from its Seoul plant, installed new pickling lines, enlarged the building, and scrapped machinery and equipment purchased from Sammi. In our examination of information on the record we find that production quantity also changed. SeAH stated in its November 20, 1997 letter that ninety of the factory employees were sent to the Changwon facility from former PSP plants, while other employees were hired. During verification we found that one of these new hires had worked for Sammi prior to 1989, and for an unaffiliated entity between 1989 and 1996. After PSP's name change to SeAH, only minimal changes occurred with respect to the number of people employed at Changwon plant. For further details, see the proprietary ''Memorandum to Robert LaRussa, Successorship: Certain Welded Stainless Steel Pipe from Korea, Changed Circumstances Review,'' January 23, 1998.

(3) Suppliers

Information on the record indicates that there have been some changes in suppliers between 1994 and 1996. An examination of PSP's 1994 supplier list and SeAH's 1996 supplier list show some changes in suppliers. An examination of Sammi's 1994 supplier list (which SeAH stated was an informal list compiled by them from basic knowledge of the Korean Stainless Steel Pipe market) and SeAH's 1996 supplier list also show changes in suppliers. However, we believe these changes are not significant, see the proprietary ''Memorandum to Robert LaRussa, Successorship: Certain Welded Stainless Steel Pipe from Korea, Changed Circumstances Review,'' January 23, 1998.

(4) Customer Base

SeAH states that it does not have Sammi's 1994 customer list; therefore, we are not able to compare SeAH's customer base to Sammi's. SeAH states that there are six other producers of WSSP in Korea, two of which are new companies, and that Sammi's former customers could go to any one of these companies to purchase WSSP. An analysis of the information submitted by SeAH indicates that PSP did not have a significant increase in its large-customer base due to the acquisition of the Changwon facility. With respect to SeAH's smaller-customer base, SeAH notes that it is likely that some of its new customers are due to the closure of Sammi's operations, but that without Sammi's lists, it cannot prove this. We found at verification that PSP used their own marketing strategies and knowledge of the market to obtain their own customers. See ''Report of Verification of SeAH Steel Corporation, Ltd. (SeAH) in the Changed Circumstances Review for Certain Welded Stainless Steel Pipe from Korea,'' page 7. A comparison of the customer lists submitted by SeAH indicates that there have been some small changes in the customer base between PSP in 1994 and SeAH in 1996.

We preliminarily find that SeAH is not the successor to Sammi as suggested by the petitioner. While the plant is a former Sammi facility, the plant was overhauled and redesigned. Further, none of Sammi's former managers work for SeAH, with the exception of two plant managers, who ceased working for Sammi long before the plant acquisition, and, therefore, were not hired as a result of that acquisition. PSP's suppliers did not change in a way that would be attributed to PSP's acquisition of the Changwon plant, and PSP did not acquire a significant number of new customers or substantial new business from such customers as a result of the Changwon acquisition.

With PSP's name change to SeAH, no major changes occurred with respect to PSP's management, plant facilities, customer base or supplier base. Therefore, we find that PSP was not the successor to Sammi and that SeAH is the successor to PSP.

These issues are more fully discussed in ''Memorandum to Robert LaRussa: Successorship: Certain Welded Stainless Steel Pipe from Korea, Changed Circumstances Review,'' January 23, 1998.

Preliminary Results of the Review

We preliminarily conclude that, for antidumping duty cash deposit purposes, SeAH is the successor to PSP. SeAH will, therefore, be assigned the PSP antidumping deposit rate of 2.67 percent.

Parties to the proceeding may request disclosure within five days. Interested parties may submit written arguments in case briefs on these preliminary results, which will be due on February 12, 1998. Rebuttal briefs, limited to arguments raised in case briefs, are due on February 17, 1998. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). A hearing, if requested, will be held on February 19, 1998. The Department will publish the final results of the changed circumstances review including the results of any such comment. This changed circumstances review and notice are in accordance with 19 CFR 353.22(f).

Dated: January 29, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3077 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Allied Tube & Conduit and Wheatland Tube Company, the petitioners in this case, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. This review covers one manufacturer/exporter.[1] The period of review is May 1, 1996, through April 30, 1997.

We preliminarily determine that, for the one company that had shipments during the review period, sales have not been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

Interested parties are invited to comment on the preliminary results. Parties that submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0650 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to

[1] As noted below, we initiated a review of three companies. However, two of these companies did not have shipments during the period of review. Accordingly, we have not reviewed any shipments by these companies.

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations last codified at 19 CFR Part 353 (April 1, 1997).

Background

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on certain welded carbon steel pipe and tube from Turkey (51 FR 17784). On May 2, 1997 (62 FR 24081), we published in the **Federal Register** the notice of ''Opportunity to Request an Administrative Review'' of this order for the period May 1, 1996, through April 30, 1997. In accordance with 19 CFR 353.22(a)(1), on May 30, 1997, the petitioners requested a review of the following producers and exporters of certain welded carbon steel pipe and tube: (1) The Borusan Group [2] (Borusan); (2) Yucelboru Ihracat, Ithalat ve Pazarlama A.S./Cayirova Boru Sanayii ve Ticaret A.S. (Yucelboru); and (3) Erbosan Erviyas Boru Sanayii ve Ticaret A.S. (Erbosan). On June 30, 1997, we published the notice of initiation of this antidumping duty administrative review (62 FR 35154).

No Shipments

Yucelboru and Erbosan notified us that they had no shipments of subject merchandise during the period of review (POR). We have confirmed this with the Customs Service.

Scope of the Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. Imports of subject merchandise are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–120, A–53 or A–135. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

We compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. Because Turkey's economy experienced high inflation during the POR (over 70 percent), we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following characteristics: grade, diameter, wall thickness, finish, and end finish. We did not find any appropriate home market sales of merchandise that was identical in these respects to the merchandise sold in the United States. Accordingly, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority. Where there were no appropriate home market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV).

Export Price

Because Borusan sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and a constructed export price (CEP) methodology was not otherwise warranted based on the facts of this review, we used an EP analysis for all of Borusan's U.S. sales, in accordance with section 772(a) of the Act.

We calculated EP based on the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we deducted post-sale price adjustments, domestic inland freight, domestic brokerage and handling, and international freight. In accordance with sections 772(c)(1)(B) and (C) of the Act, respectively, we added countervailing duties imposed on the subject merchandise to offset export subsidies, and we added duty drawback.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Borusan's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because Borusan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Cost of Production Analysis

Because the Department disregarded sales below the cost of production (COP) in the last completed review of Borusan (1993–94 POR), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided at section 773(b)(2)(A)(ii) of the Act. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 62 FR 51629 (October 2, 1997). Therefore, we considered whether any home market sales by Borusan should be disregarded from our analysis as below-cost sales within the meaning of section 773(b) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Borusan's costs of materials and fabrication employed in producing the foreign like product, plus general and administrative expenses (G&A) and finance expenses.

As noted above, we determined that the Turkish economy experienced high inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of prices and costs, we requested that Borusan submit the product-specific cost of manufacturing (COM) incurred during each month of the POR. We calculated a POR-average COM for each product after indexing the reported monthly costs during the POR to an equivalent currency level using the Turkish wholesale price index from International Financial Statistics published by the International Monetary Fund (IMF). We then restated the POR-average COM in the currency value of each respective month. We multiplied Borusan's G&A and finance rates by the monthly COMs and added these amounts to derive product-specific monthly COPs.

[2] Borusan Birlesik Boru Fabrikalavi A.S., Kartal Boru Sanayii ve Ticaret A.S., Bosas Boru Sanayii ve Ticaret A.S., and Borusan Ihracat Ithalat ve Dagitim A.S.

2. Test of Home Market Prices

We compared the product-specific monthly COPs to home market sales of the foreign like product in order to determine whether these sales had been made at prices below the COP. We determined the net home market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Borusan's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Pursuant to sections 773(b)(2)(B)–(D) of the Act, where 20 percent or more of Borusan's sales of a given product were at prices less than the COP, we disregarded the below-cost sales from our analysis because they (1) were made over an extended period of time in substantial quantities, and (2) were at prices which would not permit the recovery of all costs within a reasonable period of time, based on comparisons of prices to POR-average COPs.[3] We used the remaining sales in our margin analysis, in accordance with section 773(b)(1).

C. Arm's-Length Test

Borusan made home-market sales to affiliated resellers during the POR. In accordance with our questionnaire, Borusan reported these sales to affiliated parties because the merchandise was not resold. We included in our analysis Borusan's home market sales to affiliated customers only where we determined that such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which Borusan sold identical merchandise to unaffiliated customers. *See* section 773(a)(1)(B) of the Act and 19 CFR 353.45. In order to determine the arm's-length nature of Borusan's home market sales to affiliated customers, we compared the prices, on a product-specific basis, of sales to affiliated and unaffiliated customers net of all movement charges, discounts, rebates, direct expenses, and packing. We added interest revenue for late payments. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Preliminary Results of Antidumping Administrative Review, 62 FR 64803, 64804 (December 9, 1997).

D. Calculation of NV Based on Home Market Prices

For those comparison products for which there were above-cost sales in the same month as the U.S. sale, we based NV on home market prices. We calculated NV based on FOB mill/warehouse or delivered prices. We made deductions from the starting price, where appropriate, for inland freight, pre-sale warehouse expenses, discounts, and rebates. We added interest revenue for late payments. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses, advertising, warranty, and bank charges. We recalculated credit expenses to correct for missing payment dates on sales for which Borusan had not received payment as of the date of its supplemental response.

We also made adjustments, when comparing U.S. sales with home market sales of similar, but not identical, merchandise, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing the foreign like product and subject merchandise, using POR-average costs as adjusted for inflation for each month of the POR, as described in *Calculation of COP*, above. We used a 20-percent difference-in-merchandise (difmer) cost deviation cap, which we calculated as the absolute value of the difference between the U.S. and the home market monthly variable costs of manufacturing divided by the U.S. total cost of manufacturing, as the maximum difference in cost allowable for similar merchandise. We note that Borusan reported its home market and U.S. variable costs of manufacturing based on the month of the date of shipment. For certain U.S. sales, the shipment date occurred in the month following the sale date. For these observations, we have adjusted the U.S. variable cost of manufacturing by deflating it to the month of the U.S. date of sale. This did not occur for any home market observations.

E. Calculation of NV Based on CV

For those comparison products for which there were no sales in the same month as the U.S. sale, made in the ordinary course of trade at prices above the COP, we based NV on CV. On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value (normal value) when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this review. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing these preliminary results, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this ''post-URAA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value; however, we invite interested parties to comment, in their case briefs, on the applicability of the *Cemex* decision to this review.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Borusan's costs of materials, fabrication, SG&A, finance expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the actual amounts incurred and realized by Borusan in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Turkey. For selling expenses, we used the weighted-average home market selling expenses. We calculated monthly CVs based on the indexing methodology described in *Calculation of COP*, above.

In comparing CV to export price, we deducted from CV the weighted-average home market direct selling expenses and added the U.S. product-specific direct selling expenses. See section 773(a)(8) of the Act.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act, to the extent practicable, we calculate NV based on sales in the comparison market at the same level of trade as the U.S. sale. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, such as those made by Borusan in this review, the U.S. level of trade is also the level of the starting-

[3] As noted in *Calculation of COP*, above, although we used monthly COPs in our analysis, these were based on POR-average costs, as adjusted for inflation.

price sale, *i.e.*, the price from Borusan to the unaffiliated U.S. importer.

To determine whether NV sales are at a different level of trade than that of the U.S. sale, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Borusan about the marketing stage involved in the reported U.S. and home market sales, including a description of the selling activities performed by Borusan for each channel of distribution. In identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

We determined that for Borusan there were two home market levels of trade and one U.S. level of trade (*i.e.*, the EP level of trade). We also determined that Borusan's EP level of trade was equivalent to one of its levels of trade in the home market. See Memorandum from Analyst to File: Preliminary Results of 1996–97 Administrative Review of Pipe and Tube from Turkey (February 2, 1998). We first attempted to compare sales at the U.S. level of trade to sales at the identical home market level of trade. If no match was available at the same level of trade, we attempted to compare sales at the U.S. level of trade to sales at the second home market level of trade. We examined whether a level of trade adjustment was appropriate for Borusan when comparing sales at its U.S. level of trade to sales at the second, non-identical, home market level of trade.

To determine whether a level-of-trade adjustment was warranted, we examined, on a monthly and product-specific basis, the prices, net of all adjustments, between sales at the two home market levels of trade. We found that the monthly average prices were higher at one level of trade for virtually all models and months as well as for virtually all sales based on quantities sold. We determined that this demonstrated a pattern of consistent price differences. Therefore, when comparing U.S. sales to home market sales at the non-identical level-of-trade, we adjusted NV for the difference in level of trade.

With respect to the level of trade for comparisons involving CV, it is the Department's practice to calculate, to the extent possible, a CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews, 62 FR 54043, 54055 (October 17, 1997). Accordingly, we have calculated CV using the level-of-trade specific selling expenses and profit at the home market level of trade that is identical to the single U.S. level of trade.

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and only used daily exchange rates. See Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42503–03 (August 7, 1997) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996).

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period May 1, 1996 through April 30, 1997:

Manufacturer/exporter	Margin (percent)
Borusan	0.04

Parties to the proceeding may request disclosure within five days of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Borusan will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 14.74 percent, the ''All Others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3078 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea; Correction

January 26, 1998.

On page 67834 of the document published in the Federal Register on December 30, 1997 (62 FR 67833), correct the HTS numbers in footnote 3 for Category 369pt. and footnote 15 for Category 659pt., as follows:

Category 369pt.: change HTS number 5602.99.1090 to 5702.99.1090.

Category 659pt.: change HTS number 6504.00.91015 to 6504.00.9015; change HTS number 6505.90.606090 to 6505.90.6090.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3111 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia; Correction

January 26, 1998.

In the **Federal Register** document published on December 30, 1997, on page 67835, column 3, footnote 6, correct the HTS numbers for Category 369pt. from 5701.10.9020 (line 3) to 5702.10.9020 and from 5602.99.1090 (line 5) to 5702.99.1090.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3110 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

January 26, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryforward applied in 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63524, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on February 2, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
334/634	232,600 dozen.
338	4,839,115 dozen.
339	1,349,895 dozen
340/640	630,214 dozen.
347/348	784,844 dozen.
363	43,559,989 numbers.
369–F/369–P [2]	2,333,694 kilograms.
369–S [3]	704,293 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–3112 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Textile Products Produced or Manufactured in Hungary

January 26, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Beginning on February 1, 1998, the Government of the Republic of Hungary will start issuing a new export visa stamp for shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after February 1, 1998. There will be a one-month grace period from February 1, 1998 through February 28, 1998, during which products exported from Hungary may be accompanied by either the old or new export visa stamp. Products exported from Hungary on or after March 1, 1998 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 49 FR 8659, published on March 8, 1984.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain textile products, produced or manufactured in Hungary for which the Government of the Republic of Hungary has not issued an appropriate export visa.

Beginning on February 1, 1998, you are directed to amend further the directive dated March 5, 1984 to provide for the use of a new export visa stamp issued by the Government of the Republic of Hungary to accompany shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after February 1, 1998.

Textile products exported from Hungary during the period February 1, 1998 through February 28, 1998 may be accompanied by either the old or new export visa stamp. Products exported from Hungary on or after March 1, 1998 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3113 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Quota, Visa and ELVIS (Electronic Visa Information System) Requirements for Discharge Printed Fabric Produced or Manufactured in Indonesia

January 23, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending quota, visa and ELVIS requirements.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of notes dated December 10, 1997 and January 9, 1998, the Governments of the United States and Indonesia agreed that discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015 and 5211.59.0015 (Category 326) which is produced or manufactured in Indonesia and imported on or after January 1, 1998 will no longer be subject to visa and ELVIS (Electronic Visa Information System) requirements and will not be subject to 1998 limits. The new designation for Categories 313, 314, 315, 317 and 326 will be part-category 313–O, 314–O, 315–O, 317–O and 326–O, respectively. The 1998 quota levels established for Categories 313, 314, 315 and 317/617/326 remain the same for the newly established part-categories 313–O, 314–O, 315–O and 317–O/617/326–O.

Also effective on January 29, 1998, products in Categories 313, 314, 315, 317 and 326 (except discharge printed fabric), produced or manufactured in Indonesia and exported from Indonesia on or after January 1, 1998 must be accompanied by a 313–O, 314–O, 315–O, 317–O and 326–O part-category visa and ELVIS transmission. Products in Category 617 shall continue to require a 617 visa and ELVIS transmission. Products currently visaed as 317/617/326 which are exported from Indonesia on or after January 1, 1998 must be accompanied by either a 317–O/617/326–O merged category visa and ELVIS transmission, or the correct category visa and ELVIS transmission (317–O, 326–O or 617) corresponding to the actual shipment. There will be a grace period from January 1, 1998 through February 14, 1998 during which products exported from Indonesia in Categories 313, 314, 315, 317 and 326 may be accompanied by the whole or new part-category visa and ELVIS transmission. During the grace period, products visaed in merged Categories 317/617/326 may be accompanied by a 317–O/617/326–O merged category visa and ELVIS transmission, a 317/617/326 merged whole category visa and ELVIS transmission or the correct category visa and ELVIS transmision (317, 326, 617, 317–O or 326–O) corresponding to the actual shipment. A visa and ELVIS transmission will not be required for discharge printed fabric in Categories 313, 314, 315, 317 and 326 imported on or after January 1, 1998, regardless of the date of export.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the export quota, visa and ELVIS requirements.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 52 FR 20134, published in May 29, 1987; 62 FR 37202, published on July

11, 1997; and 62 FR 67625, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which begins on January 1, 1998 and extending through December 31, 1998.

Effective on January 29, 1998, discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015 and 5211.59.0015 (Category 326) which is produced or manufactured in Indonesia and imported on or after January 1, 1998 will no longer be subject to visa and ELVIS (Electronic Visa Information System) requirements and will not be subject to 1998 limits, pursuant to exchange of notes dated December 10, 1997 and January 9, 1998. The new designation for Categories 313, 314, 315, 317 and 326 will be part-category 313–O [1], 314–O [2], 315–O [3], 317–O [4], 326–O [5], respectively.

The 1998 quota levels established for Categories 313, 314, 315 and 317/617/326 remain the same for the newly established part-Categories 313–O, 314–O, 315–O and 317–O/617/326–O.

Also effective on January 29, 1998, you are directed to amend further the directive dated May 19, 1987 to require a part-category visa and ELVIS transmission for Categories 313–O, 314–O, 315–O, 317–O and 326–O, produced or manufactured in Indonesia and exported on or after January 1, 1998. Products in Category 617 shall continue to require a 617 visa and ELVIS transmission. Products currently visaed as merged Categories 317/617/326 which are exported from Indonesia on or after January 1, 1998 must be accompanied by either a 317–O/617/326–O merged category visa and ELVIS transmission or the correct category visa and ELVIS transmission (317–O, 326–O or 617) corresponding to the actual shipment. There will be a grace period from January 1, 1998 through February 14, 1998 during which products exported from Indonesia in Categories 313, 314, 315, 317 and 326 may be accompanied by the whole or new part-category visa and ELVIS transmission. During the grace period, products visaed in merged Categories 317/617/326 may be accompanied by a 317–O/617/326–O merged category visa and ELVIS transmission, a 317/617/326 merged whole category visa and ELVIS transmission, or the correct category visa and ELVIS transmission (317, 326, 617, 317–O or 326–O) corresponding to the actual shipment. A visa and ELVIS transmission will not be required for discharge printed fabric in Categories 313, 314, 315, 317 and 326 imported on or after January 1, 1998, regardless of the date of export.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa and ELVIS transmission shall be denied entry and a new visa and ELVIS transmission must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3109 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0006]

Submission for OMB Review; Comment Request Entitled Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a revision to an existing OMB clearance (9000–0006).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Subcontracting Plans/Subcontracting Reporting for Individual Contracts (Standard Form 294). A request for public comments was published at 62 FR 17597, April 10, 1997. No comments were received.

DATES: *Comment Due Date:* March 9, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0006, Subcontracting Plans/Subcontracting Reporting for Individual Contracts (Standard Form 294), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, et seq.), contractors receiving a contract for more than $10,000 agree to have small business, small disadvantaged business, and women-owned small business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small, small disadvantaged business concerns, and women-owned small businesses. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on Standard Form 294, Subcontracting Report for Individual Contracts.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *4,253;* responses per respondent, *3.44;* total annual responses, *14,631;* preparation hours per response, *29.25;* and total response burden hours, *428,035.* Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0006 in all correspondence.

Dated: February 3, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–3076 Filed 2–5–98; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 7, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 2, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Notice Inviting Proposals for Experimental Sites.

Frequency: One time.

Affected Public: Businesses or other for-profits; State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 500.

Burden Hours: 2,500.

Abstract: With this notice, the Secretary invites proposals to reinvent the administration of Federal student assistance programs through the use of the experimental sites authority (Section 487A(d) of the Higher Education Act of 1965, as amended. The program is intended to encourage institutions to develop innovative strategies to improve Title IV program administration.

[FR Doc. 98–2957 Filed 2–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 9, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 2, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Reinstatement.

Title: Applications for the U.S. Presidential Scholars Program.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:

Responses: 2,600.

Burden Hours: 41,600.

Abstract: The United States Scholars Program is a national recognition program to honor and recognize outstanding graduating high school seniors. Candidates are invited to apply to the program based on academic achievements on the SAT or ACT. This program was established under Executive Order of the President 11155.

[FR Doc. 98–2958 Filed 2–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

Relocation and New Mailing Address

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of relocation and new mailing address.

SUMMARY: The Office of Natural Gas & Petroleum Import and Export Activities, formerly known as the Office of Fuels Programs, is announcing the relocation of its office and docket room within DOE headquarters, and its new mailing address. On January 27, 1998, the Office of Natural Gas & Petroleum Import and Export Activities and its docket room moved from their current locations at Rooms 3F–070 and 3F–056, to Rooms 3E–042 and 3E–033, respectively, within the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

ADDRESSES: All submissions, including those made pursuant to section 3 of the Natural Gas Act (NGA), should be filed with the Office of Natural Gas & Petroleum Import and Export Activities, Fossil Energy, Docket Room 3E–033, FE–34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478.

Any questions should be directed to Larine A. Moore, Docket Room Manager, (202) 586–9478.

Issued in Washington, D.C., on January 29, 1998.

John W. Glynn,

Manager, Economic and Market Analysis, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–3006 Filed 2–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–315–001]

Independence Pipeline Company; Notice of Petition To Amend

February 2, 1998.

Take notice that on December 19, 1997, Independence Pipeline Company (Independence) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–315–001, pursuant to Section 7 (c) of the Natural Gas Act, a petition to amend its pending application filed in Docket No. CP97–315–000 to, among other things, reroute certain segments of the new pipeline it has proposed to construct and operate between Defiance, Ohio and Leidy, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On March 31, 1997, Independence filed with the Commission in Docket No. CP97–315–000 requesting authority to construct and operate an approximately 370-mile, 36-inch diameter pipeline system to transport gas from Defiance, Ohio to Leidy, Pennsylvania. The proposed pipeline is designed to provide transportation services on an open-access basis to shippers seeking to transport gas principally from expansion projects destined for the Chicago Hub to the Leidy Hub, thereby facilitating access to gas markets in Ohio, Pennsylvania and throughout the Eastern United States.

Since the original application was filed, several events have occurred. One is the addition of a new partner in the project. The original partners in Independence were ANR Independence Pipeline Company (ANR Independence) and Transco Independence Pipeline Company (Transco Independence), subsidiaries of ANR Pipeline Company (ANR) and Transcontinental Gas Pipe Line Corporation (Transco), respectively. On September 23, 1997, Seneca Independence Pipeline Company (Seneca Independence), an affiliate of National Fuel Gas Supply Corporation (National Fuel) reached agreement with ANR Independence and Transco Independence to purchase an interest in the Independence partnership. Each partner, including Seneca Independence, will now hold a 33⅓% interest in the partnership.

By the petition to amend, Independence proposes to modify the original application to:

(1) Reflect routing changes;

(2) Reflect changes in compression;

(3) Update estimated facility costs for the project;

(4) Add to the tariff an option for negotiated rates; and

(5) Reduce the proposed maximum tariff rates.

Independence states that since the original application was filed, it has met with landowners, public officials, environmental agencies, non-government organizations, and others with regard to the pipeline route. As a result of these discussions, Independence is proposing route changes in Ohio and Pennsylvania which it believes will better address existing land use issues and which are environmentally preferable to the route originally proposed. Independence states that the proposed reroutes will increase the overall length of the project from 369.7 to 400.4 miles. The most notable reroute involve the portion of the pipeline in Stark and Summit Counties, Ohio and the eastern-most 105 miles of the pipeline in Pennsylvania. The proposed Pennsylvania reroute (the Clarion Reroute) is significant in that the last 105 miles of the pipeline will follow a completely different right-of-way which is well north of the original route. The Clarion Reroute will use existing pipeline corridors for approximately 59 miles.[1] In addition, environmental review of the final 65 miles was previously conducted as part of another project. Independence asserts the Clarion Reroute is easier to build, has better access roads and will provide better access to National Fuel's pipeline and storage system.

Independence has reexamined the configuration of the system in conjunction with the proposed pipeline reroutes and has concluded that although the total amount of compression (60,000 Horsepower (HP)) is sufficient, a three compressor station design optimizes system capability more than the two proposed in the original application. It is stated that the

[1] Approximately 59 miles of the Clarion Reroute will involve use of National Fuel's existing right-of-way. National Fuel will remove certain of its existing lines within its right-of-way and Independence will install larger diameter replacement pipeline using the same trench. National Fuel has filed a related application to abandon the subject pipeline facilities in Docket No. CP98–200–000.

proposed station at Defiance, Ohio will remain unchanged (two 15,000 HP units). However, Independence now proposes two downstream compressor stations, each of which would have a 15,000 HP unit. One station would be located in Wayne County, Ohio (the Canaan Station) and the other would be located in Clarion County, Pennsylvania (the Porter Station).

Independence now proposes 3 meter stations. Independence had originally proposed stations at the western and eastern termini of the system, one at Defiance, Ohio and one at Leidy, Pennsylvania. Independence now proposes to add a meter station in Elk County, Pennsylvania at an interconnection with National Fuel. Independence further proposes 5 taps, 4 in Ohio and 1 in Pennsylvania, all at unspecified locations. The proposed taps are designed to permit possible future interconnections with East Ohio Gas Company, Columbia Gas Transmission Company, and National Fuel—interconnections now under discussion.

Independence states that it is revising the estimated facility costs of the project from $629.6 million to $677.9 million to take into account costs attributable to the proposed route changes, the addition of a new meter station, changes to compression facilities, and a general update in project costs.

Independence states that the redesigned compression, along with the increases in pipeline length and other minor factors has changed maximum capacity from 838,500 Mcf per day (Mcfd) to 916,300 Mcfd (summer design) and from 943,300 Mcfd to 1,001,100 Mcfd (winter design).

In order to best meet the needs of the market, Independence now proposes to offer the option of negotiated rates. Therefore, Independence requests authority for tariff language to enable Independence to negotiate rates with its shippers, consistent with the Commission's policy statement on negotiated rates.

Independence further proposes to reduce the maximum tariff rates for service on the proposed pipeline. The change reflects the revised project capital costs, a change in the depreciable life of the plant from 25 to 40 years, and a reduced long-term interest rate assumption (from 8.25% to 7.50%).

Any person desiring to participate in the hearing process or to make any protest with reference to said petition to amend should, on or before February 23, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2926 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–199–000]

Midcoast Interstate Transmission Inc.; Notice of Application for Abandonment

February 2, 1998.

Take notice that on January 23, 1998, Midcoast Interstate Transmission, Inc. (Midcoast), 3230 Second Street, Muscle Shoals, Alabama 35662, filed in Docket No. CP98–199–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment by sale to the City Of Florence, Florence, Alabama, of certain certificated meter, measuring and regulating station facilities and appurtenances, as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Specifically, Midcoast wants to abandon by sale to the City of Florence, the facilities known as Midcoast's Florence #2 Meter Station and appurtenances which were installed in 1983 pursuant to a Commission order in Docket No. CP81–155. Midcoast indicates that the only customer utilizing or being served through these facilities is the City of Florence, and that the facilities are utilized solely as a secondary delivery point for gas received from Tennessee Gas Pipeline Company (Tennessee) and delivered to the City of Florence pursuant to Midcoast's Firm Transportation Agreement No. 6006. Midcoast says if the facilities are not abandoned and sold to the City of Florence, the facilities could become inactive. Midcoast states that all current volumetric requirements for service to the City of Florence pursuant to the FT agreement will be provided through other existing facilities.

Midcoast states that the proposed abandonment will permit Midcoast to avoid underutilization of the facilities, while the City of Florence will be able to receive gas directly from Tennessee without the needless construction of duplicative facilities. Midcoast and the City of Florence has agreed to the sale and purchase of the facilities for the amount of $50,000.00.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Midcoast to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2927 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–200–000]

National Fuel Gas Supply Corporation; Notice of Application

February 2, 1998

Take notice that on January 26, 1998, National Fuel Gas Supply Corporation (National Fuel) 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP98–200–000 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

National Fuel states that its proposed abandonment is related to a reroute (the Clarion Reroute) proposed by Independence Pipeline Company in an amended application filed in Docket No. CP97–315–001. A portion of the Clarion Reroute would follow National Fuel's existing right-of-way between Eshbaugh and Lamont, Pennsylvania, a distance of approximately 40 miles.

In its application, National Fuel requests authorization to abandon approximately 30.57 miles of transmission pipeline (and in addition, would abandon 26.03 miles of a non-jurisdictional gathering line) in Clarion, Jefferson, and Elk Counties, Pennsylvania in order to provide space for the proposed 36-inch Independence Pipeline. This would permit the Independence Pipeline to be laid in the existing right-of-way, alongside National Fuel's existing facilities. National Fuel states that its proposed abandonment would reduce the amount of corridor widening necessary to build the Independence Pipeline along this 40-mile corridor, adding to the other advantages of the Clarion Reroute, as described in Independence's amended application in Docket No. CP97–315–001.

National Fuel states that the abandonment will require the relocation of inlet piping at four regulator stations and three taps and the addition of three jumpers, pursuant to Section 2.55(a) of the Commission's regulations. An automation upgrade would also be performed at National Fuel's Knox Compressor Station, pursuant to Section 2.55(a) of the Commission's regulations.

National Fuel estimates that the cost of removing the pipelines to be abandoned will be offset by the salvage value of these pipelines and the cost of the above-described system modifications will be reimbursed by Independence. These system modifications will cost approximately $843,000.

National Fuel requests that the Commission issue an order approving the abandonment contemporaneously with a Commission order issuing a certificate to Independence in Docket No. CP97–315–001.

National Fuel states that the proposed abandonment and the construction of the Independence Pipeline would not adversely affect system operations or service to customers.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 23, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designeee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2928 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–122–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1998.

Take notice that on January 29, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective March 1, 1998:

Tenth Revised Sheet No. 5
Tenth Revised Sheet No. 6
Fourth Revised Sheet No. 162
Fourth Revised Sheet No. 233A
Second Revised Sheet No. 319
Second Revised Sheet No. 320
First Revised Sheet No. 321

NGT states that the purpose of this filing is to reflect the removal of the GRI surcharge from its rate sheets and the GRI provisions contained in the General Terms and Conditions of NGT's tariff. Pursuant to GRI bylaws, NGT will remit to GRI all GRI collections made for the period prior to the effective date of NGT's resignation.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2934 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–15–000]

Overthrust Pipeline Company; Notice of Tariff Filing

February 2, 1998.

Take notice that on January 28, 1998, Overthrust Pipeline Company, tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective February 27, 1998:

Original Volume No. 1

Fourth Revised Sheet No. 1
Second Revised Sheet No. 46

First Revised Volume No. 1–A

Title Page
Fourth Revised Sheet No. 37
Third Revised Sheet Nos. 43 and 77
First Revised Sheet Nos. 107 and 108

Overthrust states that the revised tariff sheets reflect a change in Overthrust's business address, telephone and fax numbers and information regarding the person to whom communications regarding the tariff should be addressed. Overthrust also indicates that, due to a recent corporate reorganization, Questar Regulated Services Company is now responsible for administering Overthrust's FERC Gas Tariff.

Overthrust states further that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2930 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–121–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1998.

Take notice that on January 29, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing to be effective March 1, 1998.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to provide an enhancement to Panhandle's existing gas parking service under Rate Schedule GPS through the addition of a negative parking provision.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriates action be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2933 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–14–000]

Questar Pipeline Company; Notice of Tariff Filing

February 2, 1998.

Take notice that on January 28, 1998, Questar Pipeline Company, tendered for filing as part of its FERC Gas Tariff, Third Revised Sheet No. 46B, Fourth Revised Sheet No. 96 and First Revised Sheet Nos. 199 and 200 to First Revised Volume No. 1, to be effective February 27, 1998. Questar also tendered revised title pages for First Revised Volume No. 1 and Original Volume No. 3 of its tariff.

Questar states that the proposed tariff sheets change Questar's business address, telephone and fax numbers and information regarding the person to whom communications regarding the tariff should be addressed. Questar states further that due to a recent corporate reorganization, Questar Regulated Services Company is now responsible for administering Questar's FERC Gas Tariff.

Questar also states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P Boergers,

Acting Secretary.

[FR Doc. 98–2929 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–56–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

February 2, 1998.

Take notice that on January 29, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 15, 1998:

Substitute Fourth Revised Sheet No. 405A
Substitute Fourth Revised Sheet No. 405C

Tennessee states that the revised tariff sheets are filed in compliance with the Commission's January 14, 1998 Order in the above-referenced docket. Tennessee Gas Pipeline Company, 82 FERC § 61,011 (1988). Tennessee submits that revised tariff sheets incorporate certain clarifications to its net present value criteria for awarding generally available capacity. In accordance with the January 14 Order, Tennessee requests that these tariff sheets be deemed effective on January 15, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary,

[FR Doc. 98–2932 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–7–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1998.

Take notice that on January 28, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2 and transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This tracking filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff and Section 4 of Transco's Rate Schedule FT–NT.

Included in Appendices B and C attached to the filing are explanations of the rate and fuel changes and details regarding the computation of the revised Rate Schedule S–2 and FT–NT rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2935 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–22–000, et al.]

El Segundo Power LLC, et al.; Electric Rate and Corporate Regulation Filings

January 30, 1998.

Take notice that the following filings have been made with the Commission:

1. El Segundo Power, LLC

[Docket No. EG98–22–000]

On December 19, 1997, El Segundo Power, LLC, with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, filed with the Commission an application for deter mination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations (the Application). On January 27, 1998, Applicant amended (the Amended Application) its initial application to submit additional information.

In the Application and the Amended Application, Applicant states that it is a limited liability company organized under the laws of the State of Delaware. Applicant will be engaged directly and exclusively in owning and operating an approximately 1020 MW gas-fired electric generating facility located at 301 Vista Del Mar Boulevard, El Segundo, CA 90245. Electric energy produced by the facility will be sold at wholesale to the Independent System Operator and into the California Power Exchange.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. WPS Resources Corporation and Upper Peninsula Energy Corporation, Wisconsin Public Service Corporation and Upper Peninsula Power Company

[Docket Nos. EC98–27–000 and ER98–1561–000]

Take notice that on January 23, 1998, WPS Resources Corporation (WPSR) and Upper Peninsula Energy Corporation (UPEN) on behalf of themselves and their jurisdictional subsidiaries (collectively Applicants), tendered for filing pursuant to Sections 203 and 205 of the Federal Power Act (the FPA), 16 U.S.C. §§ 824b and 824d (1994) and Parts 33 and 35, 18 CFR 33.1–33.10 and 3.0–35.33, and Section 2.26, 18 CFR 2.26, of the regulations of the Federal Energy Regulatory Commission (the Commission), an Application for Approval of Merger and Related Authorizations (Application).

The Applicants also tendered for filing a single system Open Access Transmission Tariff and a Coordination and Allocation Agreement, both of which are proposed to become effective upon consummation of the merger, and a set of Codes of Conduct governing inter-affiliate activities, which are proposed to take effect as of the date on which the Application was filed. Applicants state that the FPA-jurisdictional subsidiaries of WPSR are: Wisconsin Public Service Corporation (Public Service), an electric and gas utility; WPS Energy Services, Inc., a wholesale power marketer; WPS Power Development, Inc., a wholesale power marketer that also owns a wholly-owned subsidiary, PDI Stoneman, Inc., which has an ownership interest in Mid-American Power, LLC (a wholesale power marketer and owner of the 53 MW E.J. Stoneman coal-fired plant). The FPA-jurisdiction subsidiary of UPEN is Upper Peninsula Power Company (UPPCo).

The merger is structured so that UPEN will be merged with and into WPSR, making UPPCo a wholly-owned subsidiary of WPSR. Public Service and UPPCo will each retain their own identities as public utilities and their current service territories. Public Service and UPPCo will continue to operate independently.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Ocean Vista Power Generation, L.L.C.

[Docket No. EG98–23–000]

On January 26, 1998, Ocean Vista Power Generation, L.L.C. (Ocean Vista), with its principal office at c/o Houston Industries Power Generation, Inc., 1111 Louisiana, 16th Floor, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Ocean Vista is a wholly-owned subsidiary of Houston Industries Power Generation, Inc., and an indirect subsidiary of Houston Industries Incorporated. Ocean Vista has acquired the Mandalay Generation Station in Oxnard, California at auction from Southern California Edison. Ocean Vista states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUCHA, and exclusively in the business of owning and or/operating, an interest in an eligible facility and selling electric energy at wholesale.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Alta Power Generation, L.L.C.

[Docket No. EG98–26–000]

Take notice that on December 23, 1997, Alta Power Generation, L.L.C. (Alta Power), with its principal office at c/o Houston Industries Power Generation, Inc., 1111 Louisiana, 16th Floor, Houston TX 77002, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Alta Power states that it is a wholly owned subsidiary of Houston Industries Power Generation, Inc., and an indirect subsidiary of Houston Industries Incorporated. Alta Power has acquired the Cool Water Generating Station in Daggett, California at auction from Southern California Edison. Alta Power states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and or/operating, an interest in an eligible facility and selling electric energy at wholesale.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. EAL/ERI Cogeneration

[Docket No. EG98–35–000]

On January 26, 1998, EAL/ERI Cogeneration Partners, L.P. (''EECLP''), with its address c/o ERI Services, Inc., 255 Main Street, Suite 500, Hartford, CT 06106, filed with the Federal Energy Regulatory Commission (''FERC'' or the ''Commission'') an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

EECLP is a Delaware limited partnership that will be engaged directly and exclusively in the business of developing, owning and operating an eligible facility to be located in Jamaica. The eligible facility will consist of an approximately 16 MW diesel-fired electric generation project and related interconnection facilities. The output of the eligible facility will be sold at wholesale and at retail to consumers located outside of the United States.

Comment date: February 19, 1998, in accordance with Standard Paragraph E

at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Maine Public Utilities Commission v. Maine Yankee Atomic Power Company

[Docket No. EL98–15–000]

Take notice that on December 24, 1997, Maine Public Utilities Commission tendered for filing a complaint against the Maine Yankee Atomic Power Company asserting the unjustness, unreasonableness and unlawfulness of charges, rates and contracts that have been collected by the Maine Yankee Atomic Power Company.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Sacramento Municipal Utility District v. Pacific Gas & Electric Company

[Docket No. EL98–16–000]

Take notice that on January 14, 1998, Sacramento Municipal Utility District tendered for filing a complaint against Pacific Gas & Electric Company for refund of energy payments derived from gas costs disallowed by order of State Utility Commission and Motion for Summary Disposition.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER97–1082–000]

Take notice that on December 31, 1997, Public Service Electric and Gas Company, PECO Energy Company, and Metropolitan Edison Company pursuant to the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, et al., 81 FERC ¶ 61,257 (1997), filed amendments to the Lower Delaware Valley Transmission System Agreement, the Extra High Voltage Transmission System Agreement, and the Susquehanna-Eastern (SE), 500 kV Transmission System Agreement, respectively, on behalf of the parties to all Agreements.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric & Power Company

[Docket No. ER98–467–000]

Take notice that on January 21, 1998, Virginia Electric & Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Alabama Power Company

[Docket No. ER98–1321–000]

Take notice that on January 6, 1998, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised Cottonton Delivery Point voltage level of service to Tallapoosa River Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). The parties request an effective date of March 15, 1998.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–1322–000]

Take notice that on January 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 17, 1997, with Potomac Electric Power Company (Potomac), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Potomac as an eligible customer under the Tariff.

PP&L requests an effective date of January 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Potomac and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ER98–1323–000]

Take notice that on January 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 27, 1997, with Columbia Power Marketing Corporation (Columbia), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Columbia as an eligible customer under the Tariff.

PP&L requests an effective date of January 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Columbia and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER98–1324–000]

Take notice that on January 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 30, 1997, with Wisconsin Electric Power Company (Wisconsin), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Wisconsin as an eligible customer under the Tariff.

PP&L requests an effective date of January 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Wisconsin and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company

[Docket No. ER98–1325–000]

Take notice that on January 16, 1998, Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, submitted a Notice of Cancellation for Delhi Energy Services, Inc., a customer under Allegheny Power's Open Access Transmission Service Tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and all parties of record.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER98–1326–000]

Take notice that on January 7, 1998, Arizona Public Service Company (APS) tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3, with American Electric Power.

A copy of this filing has been served on the Arizona Corporation Commission and American Electric Power.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1327–000]

Take notice that on January 7, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and WPS Energy Services, Inc. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff Original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on December 15, 1997.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER98–1438–000]

Take notice that on January 15, 1998, the following Participants [1] tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.12, an Open Access Transmission Tariff and other related documents to form the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), an Independent System Operator.

The Participants state that the Midwest ISO will operate independently of any transmission owners or other market participants, will provide nondiscriminatory access to transmission facilities in a multi-state region at non-pancaked rates, and will enhance regional reliability.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3072 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–P

[1] Cinergy Corp. (on behalf of Cincinnati Gas & Electric Company, PSI Energy, Inc., and Union Light, Heat & Power), Commonwealth Edison Company, Wisconsin Electric Power Company, Hoosier Energy Rural Electric Cooperative, Inc., Illinois Power Company, Wabash Valley Power Association, Inc., Ameren (on behalf of Central Illinois Public Service Company and Union Electric Company), Kentucky Utilities Company, and Louisville Gas & Electric Company.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2032–001]

Lower Valley Power and Light Inc.; Notice of Intent to Prepare an Environmental Assessment and Solicitation of Written Scoping Comments

February 2, 1998.

The Federal Energy Regulatory Commission (Commission) has received an application from the Lower Valley Power and Light, Inc. (Lower Valley) to relicense the Strawberry Hydroelectric Project No. 2032–001. The 1500-kilowatt project is located on Strawberry Creek near Bedford, within lands of the Bridger National Forest, in Lincoln County, Wyoming.

The Commission, as the lead agency, and the Forest Service intend to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by Lower Valley, and analyze both site-specific and cumulative environmental impacts of the project, as well as, economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the Staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the environmental coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Strawberry Hydroelectric Project, FERC No. 2032–001.

Intervenors are reminded of the Commission's Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Surender Yepuri, Project Coordinator, at (202) 219–2847.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2931 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 17 Through November 21, 1997

During the week of November 17 through November 21, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a

list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 29, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 60]

Week of November 17 Through November 21, 1997

Appeal

Los Alamos Study Group, 11/19/97, *[VFA–0346]*

OHA granted in part an Appeal filed by the Los Alamos Study Group (the Study Group) from a FOIA determination issued by the Albuquerque Operations Office (Albuquerque). OHA remanded this matter because the determination letter issued by Albuquerque was based upon: (1) A misunderstanding of the scope of the Study Group's request for classified documents, and (2) the incorrect assumption that the five facilities named in the Study Group's FOIA request were located at Los Alamos National Laboratory (LANL). OHA also found that the staff of the DOE Los Alamos Area Office and LANL performed an adequate search for responsive unclassified documents.

Personnel Security Hearings

Personnel Security Hearing, 11/17/97, *[VSO–0159]*

A Hearing Officer found that an individual had not successfully mitigated security concerns arising from his use of alcohol. Accordingly, the Hearings Officer recommended in the Opinion that the individual's access authorization not be restored.

Personnel Security Hearing, 11/18/97, *[VSO–0167]*

A Hearing Officer found that an individual had not successfully shown rehabilitation from his alcohol dependence. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

City of Harrisburg	RF272–76720	11/19/97
Crude Oil Supple Dist	RB272–00126	11/19/97
Gulf Oil Corporation/Western Mountain Oil Co., Inc	RF300–16557	11/19/97
Helen Lois Thomas et al	RK272–04673	11/19/97
Lewis R. & Janice Zeit et al	RK272–04590	11/21/97
Lucian Cox Transfer Service	RK272–04635	11/19/97
Mrs. George L. Reeves et al	RK272–01929	11/21/97

Dismissals

The following submissions were dismissed.

Name	Case No.
University Gulf	RR300–00290

[FR Doc. 98–3004 Filed 2–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 8 through December 12, 1997

During the week of December 8 through December 12, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 29, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 63]

Week of December 8 Through December 12, 1997

Appeals

Dykema Gossett, PLLC, 12/11/97, *[VFA–0349]*

The DOE granted in part a Freedom of Information Act (FOIA) Appeal filed by Dykema Gossett, PLLC. In its decision, DOE found that the Oak Ridge

Operations Office failed to adequately explain why it withheld a document under FOIA Exemption 4. Accordingly, the matter was remanded to Oak Ridge for a new determination.

Tod Rockefeller, 12/11/97, *[VFA–0351]*

Tod Rockefeller appealed a Determination issued to him by the Department of Energy in response to a request under the Freedom of Information Act (FOIA). In its Determination, the Albuquerque Operations Office (DOE/AL) released two responsive documents but redacted identifying portions under Exemption 6 of the FOIA. The DOE first determined that the Privacy Act did not apply to the two documents because they were not kept in a ''system of records.'' The DOE then concluded that Exemption 6 protects that the type of inflammatory material withheld in this case by DOE/AL. Accordingly, the DOE denied the Appeal.

Personnel Security Hearings

Personnel Security Hearing, 12/9/97, *[VSO–0168]*

An Office of Hearings and Appeals Hearing Officer issued an opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 CFR part 710. The individual's access authorization had been suspended because of his use of alcohol. The Hearing Officer found that the individual had not been abstinent long enough (nine months) and had not undergone sufficient rehabilitative treatment to warrant a finding that he is rehabilitated from his past alcohol use and current alcohol abuse. The Hearing Officer also concluded that none of the other arguments advanced by the individual in his defense mitigated the resulting security concerns. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 12/8/97, *[VSO–0170]*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization. The Hearing Officer found that questions as to the individual's eligibility for a security clearance arose under four of the criteria specified in 10 CFR § 710.8: F (falsification), J (alcohol abuse), K (illegal drug use), and L (criminal behavior). The Hearing Officer further found that the individual failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information and that he had not corroborated his assertion that he had abstained from alcohol and illegal drugs for more than a year. The Hearing Officer rejected the individual's claim that he should be allowed a 24-month period to establish rehabilitation just as are participants in the DOE's Substance Abuse Referral Program. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be restored.

Refund Application

Enron Corp./BTU Energy Corporation, 12/12/97, *[RF304–20]*

The DOE denied an Application for Refund submitted in the Enron Corporation special refund proceeding concerning purchases from Enron made by BTU Energy Corporation. The DOE found that BTU was a reseller whose purchases from Enron were made on the spot market, were sporadic and discretionary in nature, and apparently were unrelated to any business obligations to its regular customers. Accordingly, the DOE found that BTU fit the spot market presumption of non-injury for resellers, and that the firm had not made a showing of injury to overcome this presumption.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Alma Farmers Union Co–Op et al	RF272–94616	12/11/97
Atlantic Richfield Co./Frank & Leo'S Auto Service	RF304–15510	12/11/97
Atlantic Richfield Co./Jerome Zielinski et al	RF304–15200	12/11/97
Crude Oil Supple	RB272–00129	12/12/97
Gulf Oil Corporation/Arrow Lakes Dairy	RR300–00260	12/11/97
Gulf Oil Corporation/Interstate Gulf	RR300–00247	12/12/97
Columbus Gulf #1	RR300–00248	
Gulf Oil Corporation/Sure Fire Butane Co. Inc.	RF300–18802	12/12/97
Midwest Energy Cementing, Inc. et al	RK272–04670	12/12/97
Mountain View Coop-Fairfield	RC272–00378	12/12/97

Dismissals

The following submissions were dismissed.

Name	Case No.
G.B.B. Corp	RK272–04605
Personnel Security Hearing	VSO–0180
TBS Industrial Recycling, Inc	RK272–04685

[FR Doc. 98–3005 Filed 2–5–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FR–5963–2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Waiver Decision and Within the Scope Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice regarding waiver of federal preemption and within the scope determination.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b) (Act), beginning in the 1998 model year to enforce amendments to its motor vehicle pollution control program which set new standards, and certification and test procedures for newly-established categories of ''Low-Emission'' medium-duty vehicles (MDVs). Additionally, EPA today has determined that California's amendments to its warranty statute and regulations for the 1994 and later model years for various motor vehicles are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act to adopt and enforce its revised emission standards and accompanying enforcement procedures for 1979 and later model year vehicles and engines.

DATES: Any objections to the findings in this notice regarding EPA's determination that California's amendments to its warranty statute and regulations for the 1994 and later model years for various motor vehicles are within the scope of previous waivers of Federal preemption must be filed by March 9, 1998. Otherwise, at the expiration of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objections to the within the scope findings described above should be filed with Mr. Robert F. Montgomery, Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. All documents submitted in the Low-emission MDV waiver request can be found in Docket A–91–71; all documents submitted in the within the scope request for the warranty amendments can be found in Docket A–91–16. Copies of the Decision Document (which discusses both the waiver and the within the scope determination) can be obtained from EPA's Engine Programs and Compliance Division by contacting Robert M. Doyle, as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 564–9258, FAX:(202) 565–2057, E-Mail: Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Mobile Sources (OMS) Home page (http://www.epa.gov/OMSWWW/). Users can find these documents by accessing the OMS Home Page and looking at the path entitled ''Regulations.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA-AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

II. Low-Emission MDV Standards Waiver Request

I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program which will (1) establish three new categories of low-emission MDVs based on levels of exhaust emission standards; ''Low-Emission Vehicle'' (LEV), ''Ultra Low-Emission Vehicle (ULEV), and ''Zero-Emission Vehicle'' (ZEV); (2) require manufacturers to certify certain minimum percentages of LEV–MDVs and ULEV–MDVs beginning in the 1998 Model Year, reaching a maximum percentage requirement in Model Year 2003, and (3) establish production credit banking and trading provisions to offer flexibility to manufacturers unable to meet the minimum percentages.[1] A comprehensive description of the California low-emission standards and accompanying program can be found in the Decision Document for this waiver and in materials submitted to the Docket by California and other parties.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Information presented to me by parties opposing California's waiver request did not demonstrate that California arbitrarily or capriciously

[1] The waiver request EPA grants today, which pertains to low-emission MDVs, is part of a comprehensive waiver request from California for its LEV program, which includes both light-duty vehicles (LDVs) such as passenger cars and light-duty trucks, and MDVs which are typically large trucks and other vehicles up to 14,000 lbs Gross Vehicle Weight Rating. On January 13, 1993 (58 FR 4166) EPA granted a waiver for the low-emission LDV component of California's program, and deferred action on the MDV component of the program (the subject of today's waiver). EPA chose to defer this action because at the time of the LEV waiver grant, an earlier waiver concerning MDVs (Docked A–91–55) was pending. This earlier request involved amendments to the California program which established new emission standards for MDVs in Model Year 1995 and beyond, and new accompanying certification and compliance test procedures and durability requirements. Because the low-emission MDV standards are amendments to the MDV standards considered in the request of Docket A–91–55, EPA needed to decide the earlier request before action on the low-emission MDV standards could be taken. On September 16, 1994 (announced in 59 FR 48625, September 22, 1994), EPA granted a waiver of Federal preemption to California's 1995 and beyond MDV standards.

reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. Information presented to me by parties opposing California's waiver request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 7, 1998. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

III. Warranty Amendments Within the Scope Request

I have determined that California's amendments to its warranty statute and regulations as applied in the 1994 model year and beyond are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act. The substantive amendments to the emission warranty requirements which are applicable under California state law to 1990 and subsequent model year passenger cars, light duty trucks and medium-duty vehicles require manufacturers to provide the following:

(1) *An emission-related ''defects warranty'' for three years or 50,000 miles.* The manufacturer must warrant that the vehicle is free from defects in materials and workmanship which cause the failure of a warranted part to be identical in all material respects to the part described in the application for certification. The emission-related parts that are defective within the period of warranty coverage must be repaired or replaced by the manufacturer at no cost to the vehicle owner. Thus it need not be shown that the defect causes the vehicle to exceed the applicable emission standards.

(2) *A seven year or 70,000 mile ''extended defects warranty'' for emission-related parts costing more than $300 to replace.* Manufacturers are required to identify those emission-related components on the existing Emissions Warranty Parts List that cost the consumer over $300 to replace as of the time of certification and to warranty those for a period of seven years/70,000 miles.

(3) *A ''performance warranty'' for three years or 50,000 miles, whichever first occurs.* Manufacturers must warrant the vehicle will pass an inspection and maintenance (SMOG CHECK) test. If a vehicle fails the SMOG CHECK test the manufacturer will be liable for the cost of the part, labor, diagnosis, and the SMOG CHECK retest to ensure the vehicle passes. The manufacturer would not be liable for the failure if it could demonstrate that the failure was directly caused by abuse, neglect or improper maintenance or repair.

(4) *A prescribed Introductory Statement for owners.* Manufacturers of all 1991 and subsequent model vehicles produced after January 24, 1991 must include in their warranty booklet a specified, standardized statement that explains in layman's terms the vehicle owner's rights and responsibilities regarding the emission control system warranty. The manufacturer's detailed warranty statement will follow this specified statement.

(5) *Common Nomenclature.* All emission-related service and certification documents, printed or updated by a manufacturer starting with the 1993 model year, must conform to the nomenclature and abbreviations in SAE publication J1930 ''Diagnostic Acronyms, Terms, and Definitions for Electrical/Electronic Systems''.

(6) The emission warranty requirements for vehicles and engines other than 1990 and subsequent model passenger cars, light-duty trucks, and medium-duty vehicles will be continued without substantial change. These requirements cover pre-1990 and subsequent model year motorcycles and heavy-duty vehicles and engines.

In a February 4, 1991 letter to EPA, CARB notified EPA of the above-described amendments to its warranty regulations affecting 1990 model year and later vehicles, and requested that EPA confirm that these amendments to its warranty statute and regulations, and new regulations requiring the use of common nomenclature in certification and in-use documentation are within the scope of existing waivers of Federal preemption.[2] The Executive Officer stated that ''[t]he regulations do not undermine the Board's prior determination that the state standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.'' [3] This statement, however, referred to a finding made by the Board before the passage of the Federal Clean Air Act Amendments of 1990 (CAAA), which required that EPA promulgate new, more stringent Federal tailpipe emission standards for light-duty vehicles and light-duty trucks beginning in the 1994 model year.[4]

[2] Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated February 4, 1991, at 2 (hereinafter ''CARB letter'').

[3] CARB letter at 5.

[4] The CAAA were signed into law on November 15, 1990. New certification and new in-use tailpipe emission standards for all light-duty vehicles and light-duty trucks, commonly referred to as Tier 1 standards, were prescribed in section 203 of the

In its February 1991 request, CARB compared the California standards and the Federal standards as they stood prior to the CAAA; the Board did not consider the protectiveness of the California standards as compared to the new standards made applicable by the CAAA. Consequently, California, at the time of its request had not made an initial determination, that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards (including Tier 1) which apply in the 1994 and later model years.

On October 4, 1991, California requested a waiver of Federal preemption for its LEV program standards, which under California state law are applicable to 1994 and later model year vehicles (which also is when the phase-in of the new Federal Tier 1 standards begins).[5] In this request, California made a protectiveness finding with regard to the California standards as applicable to the 1994 and later model years compared to the applicable Federal standards (including Tier 1) as a basis for the waiver request addressing LEV standards. For the reasons stated above, CARB acknowledged, in its October 1991 request for a waiver for its LEV standards, the possibility that EPA may address the warranty amendments as they apply only through the 1993 model year.[6]

EPA announced, on August 14, 1992, its determination that California's amendments to its warranty program were within the scope of previous waivers only through the 1993 model year.[7] EPA also stated that, provided California was granted a waiver of Federal preemption for its LEV standards, the warranty regulations which were the subject of CARB's request for a within-the-scope determination would continue to be within the scope of existing waivers beyond the 1993 model year so long as they 1) do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards 2) do not affect the consistency of California's requirements with section 202(a) of the Act, and 3) raise no new issues affecting EPA's previous waiver determinations.

On January 7, 1993, EPA granted a waiver of Federal preemption for the low-emission LDV component of California's LEV program.[8] EPA also has waived Federal preemption for California's standards applicable to 1995 and later model year MDVs.[9] EPA has waived in today's decision California's MDV standards for 1998 and later model year vehicle and engines which are part of the LEV Program. EPA has previously determined that California's earlier emission warranty regulations were within the scope of previous waivers.[10] Therefore, EPA now has determined that emission warranty regulations, which are the subject of CARB's February 4, 1991 letter, as applied through the 1994 model year and beyond to passenger cars, light-duty trucks and medium-duty vehicles and engines, are within the scope of earlier waivers granted for standards.

With regard to the 1994 and later model years, these amendments do not undermine California's determination that its standards, in the aggregate are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the Environmental Protection Agency's (EPA) previous waiver determination. Thus these amendments are within the scope of previous waivers determinations. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of this notice, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings. Otherwise, these findings shall become final at the expiration of this 30-day period.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 7, 1998. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: January 20, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–3043 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

Amendments, which added new sections 202(g) and 202(h) to the Clean Air Act (CAA). On June 5, 1991 EPA published the Final Rule implementing the Tier 1 standards in the **Federal Register** at 56 FR 25724. In addition, section 202(j) of the Act requires promulgation of a Cold CO standard. 58 FR 9468 (July 19, 1993).

In addition, the Federal warranty requirements also changed beginning in the 1995 model year. The CAAA significantly modified the Federal light-duty requirements. Prior to the amendments the period of warranty coverage was generally 5 years/50,000 miles. The CAAA, beginning in the 1995 model year, shorten the basic defects warranty period to 2 years/ 24,000 miles but extend it to eight years/ 80,000 miles in the case of catalytic converters, electronic emissions control units, onboard diagnostic (OBD) devices, and other pollution control devices that meet certain criteria and are designated by the Administrator as a ''specified major emission control component.'' CAA Section 207(i).

[5] California Proposed Regulations for Low Emission Vehicle Standards and Clean Fuels (August 13, 1990). Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991.

[6] Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991, p. 10, footnote 14.

[7] 57 FR 38502 (August 25, 1992).

[8] 58 FR 4166 (January 13, 1993).

[9] 59 FR 48625 (September 22, 1994).

[10] 37 FR 14831 (July 25, 1972); 44 FR 61096 (October 23, 1979); 51 FR 12391 (March 26, 1986); 51 FR 15961 (April 22, 1986).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5962–9]

Information for States on Recommended Operator Certification Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is announcing the public availability of EPA 816–R–98–001, ''Information for States on Recommended Operator Certification Requirements.''

Section 1420(d)(2) of the Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA, through a partnership with States, public water systems, and the public, to develop information for States on recommended operator certification requirements. EPA is required to publish this information by February 6, 1998. Consistent with these statutory requirements, the EPA appointed such a work group (the Partnership), under the general provisions of the Federal Advisory Committee Act (Pub. L. 92–423), to provide advice on matters relating to operator certification. The Partnership held formal meetings in March, June, August, and September of 1997. These meetings were advertised in the **Federal Register** and were open to the public. The ''Information for States on Recommended Operator Certification Requirements,'' as developed by the Partnership, consists of four chapters. Chapter 1 contains a summary of the existing State operator certification programs. Chapter 2 contains excerpts from the National Research Council's book entitled *Safe Water From Every Tap* including the Executive Summary and Chapter 6—Training Operators for Small Systems. Chapter 3 contains the ''Operator Certification Program Standards'' developed by the Association of Boards of Certification. Chapter 4 contains a listing of State Drinking Water Administrators and Operator Certification Program Officers. The materials in this package are offered for information only and are intended to assist the States as they begin to review their operator certification programs. This information will be used by EPA as background material to develop operator certification guidelines, as required by Section 1419 of the SDWA. These guidelines, which will be published by February 1999, will specify the minimum requirements for a State operator certification program.

DATES: The document is available beginning February 6, 1998.

ADDRESSES: Copies of ''Information for States on Recommended Operator Certification Requirements'' are available from the Safe Drinking Water Hotline, telephone (800) 426–4791. Hours of operation are 9:00 a.m. to 5:30 p.m. Eastern Standard Time, Monday through Friday excluding Federal Holidays. Copies are also available from the Office of Water Resource Center (RC4100), U.S. EPA, 401 M Street, SW, Washington, DC, 20460. Also, Chapters 1 (excluding appendices), 3 and 4 of the document may be obtained from the EPA Web Site at the URL address: ''http:/www.epa.gov/OGWDW.''

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791. For technical inquiries, contact Richard Naylor, Designated Federal Officer, Drinking Water Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, SW, Washington, DC, 20460. The telephone is (202) 260–5135 and the e-mail address is naylor.richard@epamail.epa.gov.

Dated: January 30, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Water.

[FR Doc. 98–3038 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5962–8]

Notice of Availability for Information for States on Developing Affordability Criteria for Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability.

SUMMARY: The Environmental Protection Agency is making available Information for States on Developing Affordability Criteria for Drinking Water. The Safe Drinking Water Act Amendments of 1996 require the Agency to publish information to assist states in developing affordability criteria. The Amendments require that the Agency consult with the States and the Rural Utilities Service of the Department of Agriculture in developing this information. The document being made available today was developed by a diverse working group of stakeholders under the auspices of the National Drinking Water Advisory Council (NDWAC). The full NDWAC reviewed a draft of this document and recommended to EPA that it be made available for public comment. The availability of the draft document was announced in a **Federal Register** notice published on November 21, 1997. The comment period closed on December 31, 1997. The final document being made available today fully reflects the Agency's consultation with the States and the Rural Utilities Service, and, to the extent possible, the comments received from other sources.

DATES: The statute requires that this information be published by February 6, 1998.

ADDRESSES: Address all inquiries concerning this document to Peter E. Shanaghan, Small Systems Coordinator, Office of Ground Water and Drinking Water, Mail Code 4606, 401 M Street S.W., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter E. Shanaghan, 202–260–5813 or shanaghan.peter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A copy of the document may be obtained by calling the Safe Drinking Water Hotline at 1–800–426–4791. The hotline operates Monday through Friday, 9:00 am—5:30 pm (EST). The document may also be downloaded from EPA's homepage, http://www.epa.gov/OGWDW.

Dated: January 30, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Water.

[FR Doc. 98–3039 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5952–3]

Sole Source Aquifer Designation of Poolesville Area Aquifer System, Lower Western Montgomery County, MD

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Regional Administrator of Region III of the U.S. Environmental Protection Agency (EPA) has determined that the portion of the Piedmont aquifer system that underlies Poolesville and the surrounding area in lower western Montgomery County, Maryland (denominated as ''Poolesville Area Aquifer System'') is the sole or principal source of drinking water for this area and if the aquifer system were contaminated would create a significant hazard to public health. This determination is in response to a

petition submitted by a citizen group, For A Rural Montgomery (FARM), requesting that the Administrator of EPA make a determination under Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), as amended, that the Poolesville Area Aquifer System is a sole or principal source of drinking water for the area. As a result of Sole Source Aquifer (SSA) designation, federal financially assisted projects in the designated area will be subject to EPA review pursuant to section 1424(e) to ensure that these projects are designed and constructed so that they do not contaminate this aquifer so as to create a significant hazard to public health. The Poolesville Area SSA adds an additional area to the existing Maryland Piedmont SSA area, previously designated by EPA in 1980 (45 FR 57165, 08/27/80). The Maryland Piedmont SSA includes seven surface water drainage basins which underlie northwestern Montgomery County, and extend into minor portions of Frederick, Carroll and Howard Counties, MD. The addition of the Poolesville Area Aquifer System to the existing SSA will extend the Maryland Piedmont SSA from State Route 28 (approximate boundary) to the Potomac River, between Little Monocacy River and Seneca Creek's confluence with the Potomac River.

EFFECTIVE DATE: This determination shall become effective February 23, 1998.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency—Region III, Drinking Water Branch, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Barbara Smith, Drinking Water Branch, U.S. EPA–III at the address above or at (215) 566–5786, e-mail: smith.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), states:

> If the Administrator determines, on his own initiative or petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

In December 1996, EPA Region III received a petition from FARM, requesting the designation of the aquifer system underlying the Poolesville area as a sole source aquifer under Section 1424(e) of the SDWA. EPA reviewed the petition and supporting documentation and began gathering available data to make a determination. EPA opened the official public comment period on the petition on June 18, 1997 and announced a public hearing in a local paper, to be held in Poolesville. EPA conducted the public hearing on July 24, 1997 at the Poolesville Elementary School. The public comment period closed on August 31, 1997. EPA received eleven letters from a variety of people, mostly representatives of local citizen groups, eight of which expressed support for the SSA designation, two expressed opposition to designation and one letter requested more information and a public hearing. Twenty-seven people attended the public hearing and 19 people presented statements, all in support of designation.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the review and technical verification process for designating an area under Section 1424(e) were:

1. The aquifer system underlying the Poolesville area supplies the service area population with 50% or more of its drinking water needs.

2. There are no economical alternative drinking water source or combination of sources to supply the designated service area.

3. The EPA has found that FARM has appropriately delineated the boundaries of the aquifer project review and service area.

4. While the quality of the area's ground water is considered to be good, it is vulnerable to contamination due to the relatively thin soil cover and rapid movement of ground water in fractured rock, coupled with increasing development and other land uses. Thin soil cover may allow contaminants to be rapidly introduced into the ground water with minimal assimilation into the soil. Rapid movement of ground water through fractured rock can allow contaminants to spread quickly, once introduced. Clean up of contaminated fractured aquifers is usually difficult to achieve and an expensive, long term effort. The designated area is underlain primarily by a fractured nonmarine sedimentary rock aquifer system, with some localized diabase intrusions. The aquifer system also includes an area of phyllite, terrace and alluvial deposits.

5. Definable Aquifer Boundaries: EPA guidance allows designations to be made for entire aquifers, hydrologically connected aquifers (aquifer systems), or part of an aquifer if that portion is hydrologically separated from the rest of the aquifer. The Poolesville Area Aquifer System boundary is based on accepted hydrological principles and EPA's interpretation of available data.

III. Description of the Aquifer System That Underlies the Designated Poolesville Area

The aquifer system underlying the Poolesville area is within the Piedmont Lowland physiographic province. The designated area extends the southwestern boundary of the existing SSA, called the Maryland Piedmont Aquifer, from State Route 28 (approximate boundary) to the Potomac River, between Little Monocacy River and Seneca Creek's confluence with the Potomac River. The designated area encompasses the surface area, as well as the underlying formations. The topography of the area is gently rolling, cut by streams and small tributaries. The area's climate is moderate and somewhat humid. Precipitation that has not evaporated, transpired or drained as runoff from the area recharges the underlying aquifer system with water.

The Poolesville area is underlain primarily by nonmarine sedimentary conglomerates, sandstones, siltstones and shales which have been locally intruded by diabase. These fractured rocks of Triassic age are part of the Newark Group, largely the New Oxford formation. The area northeast of Poolesville is underlain by phyllite crystalline rock of early Paleozoic age (approximate age) and underlies the Barnesville, Beallsville and Jerusalem area. The phyllitic rocks are foliated and fractured. Located west of Poolesville towards the Potomac River, are terrace deposits of Tertiary age, comprised of unconsolidated sediments that are not used for ground water supply. Alluvial sediments of Quaternary age occur along the Potomac River valley and some of the major tributaries, but also are not used for ground water supply.

All drinking water (except commercially obtained bottled water) in the Poolesville area is ground water, supplied by the underlying aquifer system. Poolesville residents are served by public water supply wells, and residents outside of Poolesville

Township obtain their drinking water from private wells.

The quality of ground water underlying the Poolesville area is generally good, but both the relatively thin soil cover and rapid movement of ground water in fractured rock reduce the capacity for contaminant attenuation, making the aquifer vulnerable to contaminates from point and nonpoint sources.

The only alternative sources of water (other than the existing supply of ground water from the Poolesville Area Aquifer System) to be considered include surface water sources, or ground water that is extracted outside the SSA area and transported to the Poolesville area, or a combination of the two. The two most likely scenarios in the event that the area's ground water was made unusable, are that the area would be served by extending water mains from Washington Suburban Sanitary Commission's (WSSC) existing distribution system, or by building local intakes and treatment facilities on the Potomac River and supplying the area. A third option is less likely and that would include pumping ground water from areas outside the SSA and delivering the water to the SSA area. All of the above options, and any others not discussed here, are economically infeasible due to the difficulties and costs of constructing water mains, distribution lines and pumping stations through out the entire designated area. Whereas the Town of Poolesville has the water infrastructure in place (wells, treatment, storage and distribution lines) and could probably be connected to the nearest WSSC distribution line for an affordable price, the area outside of Poolesville, that relies on individual wells and has no water distribution system in place, could not afford the massive expense involved in laying distribution pipes to each farm, home, business and school in the designated area. Houses and farms are located farther apart in the areas outside of Poolesville, and could not be put on a distribution system in an economically feasible way.

Local government has acted to protect the ground water quality in Poolesville by starting a Wellhead Protection program in cooperation with the Maryland Department of the Environment. The petitioner group believes that a Sole Source Aquifer designation would augment local ground water protection efforts, and assist in preserving the rural and natural resources of the area.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition and supporting document submitted to the EPA Region III by FARM, letters received during the public comment period, and public comments received during the public hearing. In addition, much of the information has been derived from published literature on the hydrogeology and water resources of the region. This information is available to the public and may be inspected at the address listed above. The petition and support document, the transcript of the public hearing and EPA's response summary to public comment are available in the Poolesville Public Library, in Poolesville, MD.

V. Project Review

EPA Region III is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments by federal agencies to projects which could potentially impact the Poolesville Area Aquifer System. The EPA will evaluate such projects, and where necessary, conduct an in-depth review, including soliciting State and local government and public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into for that project. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially-assisted projects will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in the Poolesville Area Aquifer Review Area.

VI. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the ''small entity'' shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to projects with the potential to impact the Poolesville Area Aquifer System SSA as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Poolesville Area Aquifer System in Western Montgomery County, MD. It provides an additional review of ground water protection

measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

VII. Summary

This determination affects only the Poolesville Area Aquifer System located in Western Montgomery County, MD. As a result of this Sole Source Aquifer determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health. Once designated, the Poolesville Area Aquifer System will become part of the existing MD Piedmont SSA area.

Dated: January 14, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, U.S. Environmental Protection Agency—Region III.

[FR Doc. 98–3042 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 19, 1998 through January 23, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7267.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–J65277–CO Rating EC2, Sheep Flats Diversity Unit, Timber Sales and Related Road Construction, Grand Mesa, Uncompahgre and Gunnison National Forests, Collbran Ranger District, Mesa County, CO.

Summary: EPA expressed environmental concerns and requested additional information related to sedimentation potential, surface water resource buffer zone mitigation and intermittent road closure BMPs.

ERP No. D–AFS–J65279–MT Rating EC2, Wayup Mine/Fourth of July Road Access, Right-of-Way Grant, Kootenai National Forest, Libby Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns and recommended additional alternatives be developed to minimize water quality impacts, disclosure of the effects of ''motorized'' mine exploration and development and incorporation of total maximum daily loads for water pollutants in the EIS.

ERP No. D–AFS–J65281–UT Rating LO, Spruce Ecosystem Recovery Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

SUMMARY: EPA expressed lack of objections.

ERP No. D–AFS–K65201–CA Rating EC2, Liberty Forest Health Improvement Project, Implementation, Tahoe National Forests, Sierraville Ranger District, Sierra and Nevada Counties, CA.

SUMMARY: EPA expressed environmental concerns involving threshold of concern (TOC) exceedences in three sub-watersheds and road management proposals.

ERP No. D–BLM–J01076–WY Rating EC2, Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications, Federal Coal Leasing, Campbell and Converse Counties, WY.

SUMMARY: EPA expressed environmental concerns and requested additional information related to Air Quality and Irreverable and Irretrievable Commitment of Resources.

ERP No. D–BLM–L65295–OR Rating EC2, Northeastern Oregon Assembled Land Exchange Resource Management Plan (RMP), Implementation, Site Specific, John Day, Umatilla, Granda Ronde, Power River Basins, Grant, Umatilla, Morrow, Wheeler, Baker, Wallowa and Union, OR.

SUMMARY: EPA expressed environmental concerns based on potential water quality and riparian habitat impacts, loss of Columbia Basin shrub-steppe habitat, and loss of old growth forest habitat.

ERP No. DS–AFS–J65213–MT Rating LO, Helena National Forest and Elkhorn Mountain portion of the Deerlodge National Forest Land and Resource Management Plan, Updated Information on Oil and Gas Leasing, Implementation, several counties, MT.

SUMMARY: EPA expressed lack of objections.

Final EISs

ERP No. F–AFS–J02034–UT, Western Uinta Basin Oil and Gas Leasing, Implementation, Federal Oil and Gas Estate on Land Administrated by the Uinta and Ashley National Forests in the western portion of the National Forests in the Western portion of the Uinta Basin, Wasatch and Duchesne Counties, UT.

Summary: EPA expressed lack of objection to the preferred alternative described in the Final EIS.

ERP No. F–AFS–J65257–UT, High Uintas Wilderness Forest Plan Amendment, Implementation, Ashley and Wasatch-Cache National Forests, Duchesne and Summit Counties, UT.

Summary: EPA expressed lack of objections with the preferred alternative.

ERP No. F–AFS–J65258–MT, Lewis and Clark National Forest Plan, Implementation, Oil and Gas Leasing Analysis, Upper Missouri River Basin, several counties, MT.

Summary: EPA expressed environmental concerns regarding the cumulative impacts analysis, and impacts to wetlands and air quality. EPA recommended that air and water quality monitoring be implemented at the lease proposal stage to verify site conditions and validate predictions.

ERP No. F–AFS–J65264–UT, Sheepherder Hill Sanitation Salvage Sale, Management of Selected Vegetation Stands, Implementation, Uinta National Forest, Spanish Fork District, Nebo Management Area, Utah County, UT.

Summary: The final EIS addressed EPA's concerns.

Dated: February 3, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–3082 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed January 26, 1998 Through January 30, 1998

Pursuant to 40 CFR 1506.9

EIS No. 980016, Draft EIS, NSF, Amundsen-Scott South Pole Station, Proposal to Modernize through Reconstruction and Replacement of Key Facilities, Antarctica, Due: March 23, 1998, Contact: Joyce A. Jatko (703) 306–1032.

EIS No. 980017, Final EIS, IBR, CA, Hamilton City Pumping Plant, Fish Screen Improvement Project, COE Section 10 and 404 Permits, Central Valley, Butte, Colusa, Glenn and

Tehama Counties, CA, Due: March 9, 1998, Contact: Matt Davis (916) 557–6708.

EIS No. 980018, Draft EIS, AFS, AK, Crane and Rowan Mountain Timber Sales, Implementation, Tongass National Forest, Stikine Area, Kuiu Island, AK, Due: March 23, 1998, Contact: Everett Kissenger (907) 772–3841.

EIS No. 980019, Final EIS, FHW, WI, La Crosse North-South Transportation Corridor Study, I–90 to US 14/61 (South Avenue) Transportation Improvements including US 53, WI–35 and WI–16, Funding and COE Section 404 Permit Issuance, La Crosse County, WI, Due: March 9, 1998, Contact: Jaclyn Lawton (608) 829–7517.

EIS No. 980020, Final EIS, AFS, CO, Dome Peak Timber Sale, Timber Harvesting and Road Construction, White River National Forest, Eagle Ranger District, Glenwood Spring, Eagle and Garfield Counties, CO, Due: March 9, 1998, Contact: David T. Van Norman (970) 827–5715.

EIS No. 980021, Final EIS, FHW, PA, Southern Beltway Transportation Project, Construction from PA–60 in Finlay Township to US 22 in Robinson Township, Funding and COE Section 404 Permit, Allegheny and Washington Counties, PA, Due: March 9, 1998, Contact: Ronald W. Carmichael (717) 221–3461.

EIS No. 980022, Final EIS, UAF, ID, Idaho Enhanced Training Project, Training for the 366th Wing at Mountain Home Air Force Base (AFB), Approval for Rights-of-Way Permit by (BLM) and Airspace Modifications by (FAA), Owyhee County, ID, Due: March 9, 1998, Contact: Ms. Brenda Cook (757) 764–6197.

EIS No. 980023, Draft EIS, AFS, ID, Sandpoint Noxious Weed Control Project, Implementation, Proposing to control noxious weeds on 46 sites, Idaho Panhandles National Forests, Sandpoint Ranger District, Bonner County, ID, Due: March 25, 1998, Contact: Betsy Hammet (208) 263–5111.

EIS No. 980024, Final EIS, NOA, AK, Juneau Consolidated Facility, Space for the University of Fairbanks School of Fisheries and Ocean Science (UAF), Site Lena Point, Fisheries Management Operation, 'Vision for 2005', Juneau, AK, Due: March 9, 1998, Contact: John Gorman (907) 586–7641.

EIS No. 980025, Draft EIS, FRC, ME, Maritimes Phase II Project, Construct and Operate an Interstate Natural Gas Pipeline, COE Section 10 and 404 Permits, Endangered Species Act (ESA) and NPDE's permits, US Canada border at Woodland (Burleyville) Maine and Westbrook Maine, Due: March 23, 1998, Contact: Paul McKee (202) 208–1088.

EIS No. 980026, Draft EIS, FTA, FL, Miami North Corridor Project, Transit Improvements between NW 62 Street at Dr. Martin Luther King Jr. Station and NW 215th Street at the Dade/Broward Counties Line, Funding, Major Investment Study, Dade County, FL , Due: March 23, 1998, Contact: Elizabeth B. Martin (404) 562–3500.

EIS No. 980027, Regulatory Draft EIS, NOA, ME, American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic, ME, Due: March 23, 1998, Contact: Rolland A. Schmitten (301) 713–2239.

Amended Notices

EIS No. 980011, Draft Supplement, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Updated Resource Information, Construction, Operation and Maintenance, COE Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM, Due: March 18, 1998, Contact: Bill Bottomly (970) 240–5337. Published FR–02–06–98—Due Date correction.

Dated: February 3, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–3083 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5963–5]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding three series of public meetings for purposes of information exchange and technical discussion on issues related to the development of regulations to control microbial pathogens and disinfection byproducts in drinking water.

The first series of meetings includes issues related to the development of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2 Disinfectants/Disinfection Byproducts Rule (Stage 2 DBP). The Agency is developing this set of rules to take into account risk trade-offs between microbial contaminants and chemical byproducts of disinfection processes, as well as to consider the need for improved control in each of these areas. Information exchange and technical discussions in these meetings will address analysis of source water occurrence data and drinking water treatment plant and distribution system data collected under EPA's Information Collection Rule (ICR). Topics such as microbial and disinfection byproduct research, methods development, supplemental survey data or other related issues may also be discussed under this series of meetings. As part of this series, a public meeting is scheduled for February 18, and 19 at the office of RESOLVE, 1255 23rd Street, NW, Suite 275, Washington, DC, that will include technical discussion on defining analyses of the ICR and plans to extract data from the ICR Federal Database to support those analyses. Discussions regarding data extraction planning will continue on February 20 at the EPA Systems Development Center, 200 North Glebe Road, Suite 300, Arlington, Virginia.

The second series of meetings includes issues related to the development of the Ground Water Disinfection Rule (GWDR). The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection ''as necessary'' for ground water systems. The intention of the GWDR is to reduce microbial contamination risk from public water sources relying on ground water. The rule will establish a framework to identify public water supplies vulnerable to microbial contamination and to develop and implement risk control strategies including but not limited to disinfection. This rulemaking will apply to all public water systems that use ground water, which includes noncommunity systems.

The third series includes issues related to the development of the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). Information exchange and technical discussions under this series of meetings will focus largely on microbial treatment improvements and controlling disinfection byproduct risk trade-offs for small systems (those serving fewer than 10,000 people), but may also address treatment for larger systems (e.g., issues related to *Cryptosporidium* inactivation). Other discussion topics

will also include issues related to the recycling of filter backwash with respect to all public water system sizes.

Each of these series of meetings is anticipated to begin in and continue through this calendar year, and may run concurrently. EPA is hereby providing notice of and inviting interested members of the public to participate in the meetings. As with all previous meetings in this series, EPA is instituting an open door policy to allow members of the public to attend these meetings. To assist EPA in managing limitations on conference room seating, members of the public who are interested in attending meetings are requested to contact the following individuals:

Rule	Contact	Phone #/E-mail
LT2ESWTR/Stage 2 DBP	Jini Mohanty	(202) 260–6415 mohanty.jini@epa-mail.epa.gov.
GWDR	Tracy Bone ..	(202) 260–2954 bone.tracy@epa-mail.epa.gov.
LT1ESWTR	Valerie Blank	(202) 260–8376 blank.valerie-@epamail.epa.gov.

Members of the public are requested to contact the people listed above also for further information about these or other meetings in these series or to be included on the mailing list to receive notice of further meetings in these series.

Dated: February 3, 1998.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–3040 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–162; Report No. AUC–98–19–A (Auction No. 19)]

Comment Sought on Reserve Prices or Minimum Opening Bids for the General Wireless Communications Service (GWCS) in the 4660–4685 MHz Band; Formula Proposed for May 27 GWCS Auction

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: In this Public Notice, the Commission is seeking comment on a proposed formula for calculating minimum opening bids for the General Wireless Communications Service, Auction No. 19.

DATES: Comment deadline: February 13, 1998; reply deadline: February 20, 1998.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, DC 20554. In addition, parties must submit one copy to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn Garland, Bob Reagle, or Arthur Lechtman, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on January 30, 1998, and is available in its entirety, including all attachments, for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Summary of Action

I. Reserve Price or Minimum Opening Bid

1. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Wireless Telecommunications Bureau (''Bureau'') to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

2. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction.

3. The Bureau recently announced the auction of 875 licenses for the General Wireless Communications Service which is scheduled to begin May 27, 1998. These licenses encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. Specifically, the licenses include: (1) five licenses in each of 172 geographic areas known as Economic Areas (EAs); (2) five licenses in each of three EA-like areas, covering Guam and the Northern Marianas, Puerto Rico and the U.S. Virgin Islands, and American Samoa.

4. In anticipation of this auction and in light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for the GWCS auction, and retain discretion to lower the minimum opening bids.

5. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool, and we propose to use this approach in the GWCS auction. A minimum opening bid will help to regulate the pace of the auction and provides flexibility.

6. Specifically, the Commission proposes the following formula for calculating minimum opening bids in Auction No. 19:

For each EA License, the minimum opening bid = $0.0030 × 5 MHz × population (based on 1990 census) with a minimum of no less than $2500.00 per license.

Comment is sought on this proposal. If commenters believe that the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the GWCS spectrum. (In order to assist them in their evaluation, interested parties are advised to review Attachment A to this Public Notice. This Attachment contains information provided to the Commission by the National Telecommunications and Information Administration. It describes certain government operations that operate in the bands adjacent to GWCS spectrum and may cause interference in some regions.) Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

II. Other Issues

7. The Bureau finds that seeking comment on other auction-related procedures for GWCS, prior to resolution of the issues raised in the *Part 1 Third Report and Order and Second Further Notice of Proposed Rule Making,* 63 FR 770 (January 7, 1998), would be premature. Additionally, certain issues (such as the upfront payment formula and competitive bidding design) were determined by the Commission in the 1995 GWCS *Second Report and Order,* 60 FR 40712 (August 9, 1995), and may be further addressed by the Commission. Because the Commission is subject to a statutory deadline of August 9, 1998, for licensing GWCS, there is insufficient time to seek comment on auction procedures after a ruling by the Commission. Rather, the Bureau finds that in these circumstances, it is in the public interest to maximize the time available to bidders between announcement of auction procedures and the start of the auction. Therefore, the Bureau will announce specific bidding procedures by public notice upon the release of the GWCS auction rules.

III. Conclusion

8. Comments are due on or before February 13, 1998, and reply comments are due on or before February 20, 1998. To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, DC 20554. In addition, parties must submit one copy to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room 239, 1919 M Street N.W., Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Technical Data on the Navy Cooperative Engagement Capability (CEC) System

I. Introduction

The purpose of this annex is to describe the technical characteristics of the Cooperative Engagement Capability (CEC) Data Distribution System. The CEC, a major new networking system being developed by the military to provide connectivity between air, land, and sea units for Theater Air Defense, will operate in the bands immediately adjacent to the 4635–4685 MHz band. In order to minimize mutual interference between the CEC system and prospective GWCS users, certain CEC technical characteristics are being made available so that GWCS equipment can be designed to reduce susceptibility to interference. While details of the overall CEC program will remain unavailable for public release, the technical parameters as described below have been recently declassified to facilitate the release of this basic data. (The point of contact at the Naval Electromagnetic Spectrum Center is Mr. Scott A. Hoschar, at (202) 764–0312, or fax (202) 764–2666. The CEC Program Office point of contact is Ms. Lalitha Avula, PEO(TAD)CB12, at (703) 602–7413, or fax (703) 602–9181.)

II. Technical Parameters

The CEC operates in the bands above and below the 4635–4685 band. In order to comply with NTIA regulations, the CEC authorized bandwidth will be contained wholly within the adjacent Federal bands so that it does not impinge upon the 4635–4685 MHz band. To achieve this, the center frequency of any CEC transmitted signal will not fall within the range 4624 to 4696 MHz.

The CEC system employs high power transmitters with directional antennas to achieve a maximum e.i.r.p. of 58 dBW (630 kW). Under most deployment scenarios, this maximum e.i.r.p. level will be directed towards the operational areas defined below or out to sea. However, under certain conditions, this maximum e.i.r.p. value may be directed at the horizon and inland from aircraft operating in the areas defined below.

The CEC emission characteristic was designed to be spectrally efficient to exceed NTIA requirements for unwanted emissions. Specific spectral parameters are as follows:

CEC SPECTRUM ROLL-OFF CHARACTERISTICS AT 4635–4685 MHZ

Lower band edge		Upper band edge	
Frequency power		Frequency power	
(MHz)	(dBW/4kHz)	(MHz)	(dBW/4kHz)
4635.00	–3.8	4685.00	–3.8
4636.10	–7.8	4683.90	–7.8
4643.95	–17.8	4676.05	–17.8
4653.00	–37.8	4667.00	–37.8

Transmitter Noise: Between 4649.6 and 4670.4 MHz, less than –87 dBW/Hz.

Harmonics and Spurious: Less than –80 dBc, that is, dB below carrier power.

II. Operating Areas

The location in which large numbers of CEC nodes will be operating includes a number of Naval/joint military exercise areas. CEC units will be located on ships and aircraft, and at land based sites. The normal operating areas are coastal waters and the contiguous land mass extending 30 nautical mile inland. The operating altitude of CEC-equipped aircraft will typically extend to 35,000 feet.

Cooperative Engagement Capability Operating Area Descriptions

Eight areas are identified as essential to support training with a large number of Cooperating Units in a CEC network. The significance of these areas is that airborne CEC units with high power transmitters are expected to be flown directly overhead and extending out to sea in and around existing military operational areas. The areas are as follows.

(1) The area extending 30 nautical miles (nm) inland from the Atlantic Ocean between Wilmington, North Carolina (NC) and Lewes, Delaware (DE) facilitate Atlantic Fleet exercises. The land based CEC terminals at Wallops Island, Virginia (VA), Eastville, VA, and Dam Neck, VA are within the boundaries established for the Atlantic Fleet exercises. The Cherry Point and Onslow Bay NC areas are also included. The Naval Air Warfare Center at Patuxent River, Maryland (MD) and facilities at Greenville, South Carolina (SC), Jacksonville, Florida (FL), and St. Petersburg, FL are not included in the inland areas. The exclusion of the four sites does not preclude CEC Radio Frequency (RF) emissions at these sites.

(2) The area extending 30 nm inland from the Gulf of Mexico between the Louisiana (LA)-Mississippi (MS) state border and Panama City, FL, to support Gulf of Mexico exercises. The area includes Gulfport and Biloxi, MS, and Pensacola and Eglin AFL, FL.

(3) The area extending 30 nm inland from the Pacific Ocean between Vandenberg Air Force Base, California (CA) and Point Mugu Naval Air Station, CA, to support Pacific Fleet exercises.

(4) The area extending 30 nm inland from the Pacific Ocean between Newport Beach, CA, and the CA-Mexico international border to support Pacific Fleet exercises. The area includes Camp Pendleton, CA.

(5) The area that includes the White Sands Missile Range, New Mexico (NM) and the Fort Bliss Military Reservation, Texas (TX) and NM to support the joint Chiefs of Staff Roving Sands Exercise.

(6) The area that includes the China Lake Naval Weapons Center and the Fort Irwin Military Reservation, CA.

(7) All of Hawaii, including the Pacific Missile Range Facility.

(8) All of Puerto Rico, including the Armed Forces Weapons Test Facility.

Potentially Affected Economic Areas

The following Economic Areas appear to be within the parameters defined by the Navy as being potentially affected by the CEC system. Estimated power levels within the 4635–4685 MHz band should be calculated on the basis of range from the boundaries of the CEC operating areas and the technical parameters given above.

COOPERATIVE ENGAGEMENT CAPABILITY IMPACTED ECONOMIC AREAS

Economic area	Name	Economic area grouping
3	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH–RI–VT	1
5	Albany-Schenectady-Troy, NY	1
6	Syracuse, NY–PA	1
7	Rochester, NY–PA	1
8	Buffalo-Niagara Falls, NY–PA	1
9	State College, PA	1
10	New York-No. New Jer.-Long Island, NY–NJ–CT–PA–MA–VT	1
11	Harrisburg-Lebanon-Carlisle, PA	1
12	Philadelphia-Wilmington-Atl. City, PA–NJ–DE–MD	2
13	Washington-Baltimore, DC–MD–VA–WV–PA	2
14	Salisbury, MD–DE–VA	2
15	Richmond-Petersburg, VA	2
16	Staunton, VA–WV	2
17	Roanoke, VA–NC–WV	2
18	Greensboro-Winston-Salem-High Point, NC–VA	2
19	Raleigh-Durham-Chapel Hill, NC	2
20	Norfolk-Virginia Beach-Newport News, VA–NC	2
21	Greenville, NC	2
22	Fayetteville, NC	2
23	Charlotte-Gastonia-Rock Hill, NC–SC	2
24	Columbia, SC	2
25	Wilmington, NC–SC	2
26	Charleston-North Charleston, SC	2
27	Augusta-Aiken, GA–SC	3
28	Savannah, GA–SC	3
29	Jacksonville, FL–GA	3
30	Orlando, FL	3
33	Sarasota-Bradenton, FL	3
34	Tampa-St. Petersburg-Clearwater, FL	3
35	Tallahassee, FL–GA	3
36	Dothan, AL–FL–GA	3
37	Albany, GA	3
38	Macon, GA	3
39	Columbus, GA–AL	3
40	Atlanta, GA–AL–NC	3

COOPERATIVE ENGAGEMENT CAPABILITY IMPACTED ECONOMIC AREAS—Continued

Economic area	Name	Economic area grouping
41	Greenville-Spartanburg-Anderson, SC–NC	2
42	Asheville, NC	2
45	Johnson City-Kingsport-Bristol, TN–VA	2
46	Hickory-Morganton, NC–TN	2
47	Lexington, KY–TN–VA–WV	2
48	Charleston, WV–KY–OH	2
53	Pittsburgh, PA–WV	2
54	Erie, PA	1
73	Memphis, TN–AR–MS–KY	3
74	Huntsville, AL–TN	3
75	Tupelo, MS–AL–TN	3
76	Greenville, MS	3
77	Jackson, MS–AL–LA	3
78	Birmingham, AL	3
79	Montgomery, AL	3
80	Mobile, AL	3
81	Pensacola, FL	3
82	Biloxi-Gulfport-Pascagoula, MS	3
83	New Orleans, LA–MS	3
84	Baton Rouge, LA–MS	3
85	Lafayette, LA	3
86	Lake Charles, LA	3
87	Beaumont-Port Arthur, TX	5
88	Shreveport-Bossier City, LA–AR	3
89	Monroe, LA	3
90	Little Rock-North Little Rock, AR	3
122	Wichita, KS–OK	5
126	Western Oklahoma, OK	5
127	Dallas-Fort Worth, TX–AR–OK	5
128	Abilene, TX	5
129	San Angelo, TX	5
131	Houston-Galveston-Brazoria, TX	5
135	Odessa-Midland, TX	5
136	Hobbs, NM–TX	5
137	Lubbock, TX	5
138	Amarillo, TX–NM	5
139	Santa Fe, NM	5
140	Pueblo, CO–NM	5
141	Denver-Boulder-Greeley, CO–KS–NE	5
151	Reno, NV–CA	6
152	Salt Lake City-Ogden, UT–ID	5
153	Las Vegas, NV–AZ–UT	6
154	Flagstaff, AZ–UT	5
155	Farmington, NM–CO	5
156	Albuquerque, NM–AZ	5
157	El Paso, TX–NM	5
158	Phoenix-Mesa, AZ–NM	5
159	Tucson, AZ	5
160	Los Angeles-Riverside-Orange County, CA–AZ	6
161	San Diego, CA	6
162	Fresno, CA	6
163	San Francisco-Oakland-San Jose, CA	6
164	Sacramento-Yolo, CA	6
172	Honolulu, HI	6
174	Puerto Rico and the U.S. Virgin Islands	3

[FR Doc. 98–3085 Filed 2–5–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1198–DR]

State of Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1198–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 13, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from severe ice storms, rain, and high winds beginning on January 5, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert S. Teeri of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

The counties of Androscoggin, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Oxford, Sagadahoc, Somerset, Waldo, Washington, and York for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3064 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1199–DR]

New Hampshire; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Hampshire (FEMA–1199–DR), dated January 15, 1998 and related determinations.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 16, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3056 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1199–DR]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1199–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Hampshire, resulting from severe ice storms, rain, and high winds on January 7, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sharon L. Stoffel of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster:

Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Stafford, and Sullivan Counties for Public Assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3057 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1196–DR), dated January 10, 1998, and related determinations.

EFFECTIVE DATE: January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 1998:

Genessee, Monroe, Niagara, and Saratoga Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–3060 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1196-DR), dated January 10, 1998 and related determinations.

EFFECTIVE DATE: January 17, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 17, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3061 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from severe storms and flooding on January 7, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Avery and Mitchell Counties for Individual Assistance.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3053 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 21, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3054 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1200–DR), dated

January 15, 1998, and related determinations.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Avery and Mitchell Counties for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3055 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 21, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–3062 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998: Van Buren County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3063 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

State of Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998 and related determinations.

EFFECTIVE DATE: January 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 13, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms and flooding beginning January 6, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Carter County for Individual Assistance and Public Assistance.

Cumberland, Jackson, and Johnson Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3065 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1201–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1201–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe ice storms, rain, high winds, and flooding beginning on January 6, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub L. 93–288 as amended, (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Addison, Chittenden, Franklin, Grand Isle, Orange, and Windsor Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3058 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Disaster Assistance; Hazard Mitigation Grant Program (HMGP); Amendment to Notice of Major Disaster Declarations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notices of specified major disasters for the listed states, and related determinations.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the **Federal Register** Notice dated October 10, 1997, which allows the States to use a one-time effort to apply HMGP eligibility criteria statewide for all disasters declared before April 7, 1997. The notices for the indicated major disasters in the specified States are hereby amended to include among those areas determined to be eligible for HMGP: the counties and parishes on the list following this notice, ''Retroactive Statewide Use of Hazard Mitigation Grant Program Funds''.

(Catalog of Federal Domestic Assistance No. 83.544, Disaster Assistance, 83.548 Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

The list of counties and parishes is as follows:

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS

State	Declaration No.	Counties
State of Alabama	FEMA–848–DR, FEMA–856–DR, FEMA–861–DR, FEMA–1013–DR, FEMA–1019–DR, FEMA–1034–DR, FEMA–1047–DR, FEMA–1070–DR, FEMA–1104–DR, FEMA–1108–DR.	All counties within the State.
State of Arizona	FEMA–977–DR	Mohave and LaPaz.
State of Arkansas	FEMA–865–DR, FEMA–907–DR, FEMA–1011–DR	All counties within the State.
State of California	FEMA–845–DR, FEMA–872–DR, FEMA–919–DR, FEMA–935–DR, FEMA–942–DR, FEMA–943–DR, FEMA–947–DR, FEMA–958–DR, FEMA–979–DR, FEMA–1005–DR, FEMA–1008–DR, FEMA–1038–DR, FEMA–1044–DR, FEMA–1046–DR, FEMA–1155–DR.	All counties within the State.
State of Delaware	FEMA–933–DR	New Castle.
	FEMA–976–DR	New Castle and Kent.
	FEMA–1017–DR	New Castle.
District of Columbia	FEMA–1030–DR	District.
State of Florida	FEMA–952–DR, FEMA–955–DR, FEMA–966–DR, FEMA–982–DR, FEMA–1035–DR, FEMA–1043–DR, FEMA–1062–DR, FEMA–1069–DR, FEMA–1074–DR, FEMA–1141–DR.	All counties within the State.

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS—Continued

State	Declaration No.	Counties
State of Georgia	FEMA–1033–DR	All counties within the State.
State of Hawaii	FEMA–864–DR	Kauai, Maui, and Oahu.
	FEMA–1147–DR	Hawaii, Kauai, and Maui.
State of Idaho	FEMA–1154–DR	All counties within the State.
State of Illinois	FEMA–997–DR, FEMA–1025–DR, FEMA–1053–DR, FEMA–1110–DR, FEMA–1112–DR, FEMA–1129–DR, FEMA–1170–DR, FEMA–1188–DR.	All counties within the State.
State of Indiana	FEMA–899–DR, FEMA–1125–DR, FEMA–1165–DR	All counties within the State.
State of Iowa	FEMA–868–DR, FEMA–879–DR, FEMA–911–DR, FEMA–928–DR, FEMA–965–DR, FEMA–986–DR, FEMA–996–DR, FEMA–1121–DR, FEMA–1133–DR.	All counties within the State.
State of Kansas	FEMA–1000–DR	All counties within the State.
Commonwealth of Kentucky	FEMA–821–DR, FEMA–834–DR, FEMA–846–DR, FEMA–893–DR, FEMA–1018–DR, FEMA–1055–DR, FEMA–1117–DR, FEMA–1163–DR.	All counties within the Commonwealth.
State of Louisiana	FEMA–1012–DR	All parishes within the State.
State of Maine	FEMA–1143–DR	Androscoggin, Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, and Washington.
State of Maryland	FEMA–1016–DR	Allegany, Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Ocean City, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester.
	FEMA–1139–DR	Allegany, Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Ocean City, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester.
	FEMA–1094–DR	Allegany, Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Ocean City, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester.
State of Minnesota	FEMA–929–DR	Aitkin, Anoka, Becker, Beltrami, Benton, Big Stone, Brown, Carlton, Carver, Cass, Chippewa, Chisago, Clay, Clearwater, Cook, Cottonwood, Crow Wing, Dakota, Douglas, Grant, Hennepin, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac Qui Parle, Lake, Lake of the Woods, LeSueur, Lincoln, Lyon, Mahnomen, Marshall, McLeod, Meeker, Mille Lacs, Morrison, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Polk, Pope, Ramsey, Red Lake, Redwood, Renville, Rock, Roseau, Scott, Sherburne, Sibley, St. Louis, Stearns, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Washington, Watonwan, Wilkin, Winona, Wright, and Yellow Medicine.
State of Minnesota	FEMA–1116–DR	Anoka, Becker, Benton, Brown, Carlton, Carver, Cass, Chippewa, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Fillmore, Goodhue, Grant, Hennepin, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kandiyohi, Lac Qui Parle, Lake, LeSueur, Lincoln, Lyon, Mahnomen, Martin, McLeod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nobles, Olmsted, Otter Tail, Pine, Pipestone, Ramsey, Redwood, Renville, Rice, Rock, Scott, Sherburne, Sibley, St. Louis, Stearns, Stevens, Swift, Todd, Wadena, Watonwan, Wilkin, Winona, Wright, and Yellow Medicine.
State of Mississippi	FEMA–968–DR, FEMA–1009–DR, FEMA–1051–DR	All counties within the State.
State of Missouri	FEMA–995–DR, FEMA–1006–DR, FEMA–1023–DR, FEMA–1054–DR.	All counties within the State.

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS—Continued

State	Declaration No.	Counties
State of Nebraska	FEMA–908–DR, FEMA–954–DR, FEMA–983–DR, FEMA–998–DR, FEMA–1027–DR.	All counties within the State.
State of New Mexico	FEMA–992–DR	All counties within the State.
State of North Carolina	FEMA–827–DR, FEMA–844–DR, FEMA–1003–DR, FEMA–1073–DR, FEMA–1127–DR, FEMA–1134–DR.	All counties within the State.
State of Pennsylvania	FEMA–1120–DR	Allegheny, Armstrong, Berks, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Dauphin, Delaware, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venanga, Warren, Washington, Wayne, Westmoreland, Wyoming, and York.
	FEMA–1130–DR	Adams, Allegheny, Beaver, Bedford, Berks, Bradford, Bucks, Butler, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Elk, Erie, Fayette, Forest, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Warren, Washington, Wayne, Westmoreland, Wyoming, and York.
	FEMA–1138–DR	Adams, Allegheny, Armstrong, Beaver, Bedford, Berks, Blair, Bradford, Bucks, Butler, Cambria, Cameron, Carbon, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Crawford, Dauphin, Delaware, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Monroe, Montour, Northampton, Northumberland, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, Wyoming, and York.
State of South Carolina	FEMA–843–DR, FEMA–881–DR	All counties within the State.
State of South Dakota	FEMA–999–DR	Bennett, Brule, Buffalo, Butte, Custer, Dewey, Fall River, Faulk, Haakon, Harding, Hughes, Hyde, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Pennington, Perkins, Potter, Shannon, Stanley, Sully, Todd, Tripp, and Walworth.
	FEMA–1031–DR	Aurora, Beadle, Bennett, Bon Homme, Brule, Buffalo, Butte, Charles Mix, Clay, Corson, Custer, Davison, Dewey, Douglas, Fall River, Faulk, Gregory, Haakon, Hamlin, Harding, Hutchison, Hyde, Jackson, Jerauld, Jones, Lake, Lawrence, Lincoln, Lyman, McCook, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Shannon, Stanley, Todd, Tripp, Turner, Union, Walworth, and Yankton.
	FEMA–1045–DR	Beadle, Bennett, Bon Homme, Brookings, Brown, Butte, Charles Mix, Clark, Clay, Codington, Custer, Davison, Day, Douglas, Deuel, Fall River, Grant, Gregory, Hamlin, Hanson, Harding, Hutchison, Jackson, Kingsbury, Lake, Lawrence, Lincoln, Marshall, McCook, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Roberts, Sanborn, Shannon, Spink, Todd, Tripp, Turner, Union, and Yankton.
	FEMA–1052–DR	Bennett, Corson, Dewey, Fall River, Harding, Jackson, Lincoln, Mellette, Minnehaha, Perkins, Shannon, Todd, Union, and Ziebach.

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS—Continued

State	Declaration No.	Counties
	FEMA–1075–DR	Bennett, Brown, Butte, Campbell, Clay, Corson, Custer, Day, Dewey, Edmonds, Fall River, Faulk, Haakon, Hand, Harding, Hughes, Hyde, Jackson, Jones, Lawrence, Lincoln, Lyman, Marshall, McPherson, Meade, Mellette, Minnehaha, Moody, Pennington, Perkins, Potter, Shannon, Stanley, Sully, Todd, Turner, Union, Walworth, Yankton, and Ziebach.
State of South Dakota	FEMA–1161–DR	Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Douglas, Deuel, Dewey, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Hughes, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Mellette, Miner, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Union, Walworth, Yankton and Ziebach.
State of Tennessee	FEMA–858–DR, FEMA–889–DR, FEMA–910–DR, FEMA–1010–DR, FEMA–1022–DR, FEMA–1057–DR, FEMA–1167–DR, FEMA–1171–DR.	All counties within the State.
State of Vermont	FEMA–1063–DR	Addison, Bennington, Caledonia, Franklin, Grand Isle, Orange, Rutland, Windham and Windsor.
	FEMA–1101–DR	Caledonia, Essex and Grand Isle.
	FEMA–1124–DR	Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, Washington and Windsor.
Commonwealth of Virginia	FEMA–847–DR, FEMA–944–DR, FEMA–1014–DR, FEMA–1021–DR, FEMA–1059–DR, FEMA–1098–DR, FEMA–1135–DR.	All counties and independent cities within the Commonwealth.
State of West Virginia	FEMA–1096–DR	Barbour, Boone, Braxton, Cabell, Clay, Gilmer, Harrison, Lincoln, Logan, McDowell, Mingo, Monongalia, Upshur, Wayne and Wyoming.
	FEMA–1115–DR	Berkeley, Braxton, Brooke, Cabell, Clay, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Jefferson, Marshall, Mason, Mineral, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pleasants, Preston, Summers, Tyler, Webster and Wood.
	FEMA–1132–DR	Berkeley, Boone, Brooke, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lincoln, Logan, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monroe, Morgan, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Summers, Tucker, Tyler, Wayne, Wetzel, Wood and Wyoming.
	FEMA–1137–DR	Barbour, Boone, Braxton, Brooke, Cabell, Clay, Gilmer, Greenbrier, Hancock, Harrison, Lincoln, Logan, Marshall, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Nicholas, Ohio, Pleasants, Pocahontas, Preston, Raleigh, Summers, Tyler, Upshur, Wayne, Webster, Wetzel, Wood and Wyoming.
	FEMA–1168–DR	Barbour, Berkeley, Boone, Brooke, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jefferson, Logan, Marshall, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Summers, Tucker, Upshur, Webster and Wyoming.

[FR Doc. 98–3059 Filed 2–5–98; 8:45 am]
BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The following Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 2281.

Name: Air Marine Services International, Inc.

Address: 13502 Chimney Sweep Drive, Houston, TX 77041.
Date Revoked: October 31, 1997.
Reason: Surrendered license voluntarily.
License Number: 1843.
Name: Arabian National Shipping Corp.
Address: 146–42 Guy Brewer Blvd., Jamaica, NY 11434.
Date Revoked: September 4, 1997.
Reason: Failed to maintain a valid surety bond.
License Number: 3398.
Name: Azuma Multi-Trans U.S.A., Inc.
Address: 1001 Fourth Avenue, Suite 2305, Seattle, WA 98154.
Date Revoked: October 8, 1997.
Reason: Surrendered license voluntarily.
License Number: 4129.
Name: Barbara G. Chopin d/d/a Southern Cargo Logistics.
Address: 3445 North Causeway Boulevard, Suite 301, Metairie, LA 70002.
Date Revoked: October 8, 1997.
Reason: Failed to maintain a valid surety bond.
License Number: 3530.
Name: Bechtrans International, Inc.
Address: 343 North Oak Street, Inglewood, CA 90302.
Date Revoked: September 29, 1997.
Reason: Failed to maintain a valid surety bond.
License Number: 1576.
Name: Ben Federico.
Address: 8035 NW 67th Street, Miami, FL 33166.
Date Revoked: October 29, 1997.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–3003 Filed 2–5–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-1173) published on pages 2981 and 2982 of the issue for Tuesday, January 20, 1998.

Under the Federal Reserve Bank of New York heading, the entry for Greater Community Bancorp, Totowa, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Greater Community Bancorp, Totowa, New Jersey; to acquire up to 9.9 percent of the outstanding stock of 1st Bergen Bancorp, Wood-Ridge, New Jersey, and thereby indirectly acquire South Bergen Savings Bank, Wood-Ridge, New Jersey, and thereby engage in operating a savings bank, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Comments on this application must be received by February 13, 1998.

Board of Governors of the Federal Reserve System, February 2, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2900 Filed 2–5–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to retain 79.8 percent of the voting shares of Mentor Investment Group, LLC, Richmond, Virginia, that are held by Notificant's wholly owned subsidiary, Wheat First Butcher Singer, Inc., Richmond, Virginia, and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y, and providing administrative services to open-end investment companies(''mutual funds''). See *J.P. Morgan & Co., Inc.*, (Order dated December 8, 1997); *Bankers Trust New York Corporation*, 83 Fed. Res. Bull 780 (1997); *Commerzbank AG*, 83 Fed. Res. Bull. 678 (1997); *The Governor and Company of the Bank of Ireland, 82 Fed. Res. Bull. 1129 (1996); Barclays PLC*, 82 Fed. Res. Bull. 158 (1996); *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993). Notificant would engage in these activities in accordance with the limitations and condition previously established by the Board by regulation or order, with certain exceptions that are discussed in the notice.

Board of Governors of the Federal Reserve System, February 2, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2901 Filed 2–5–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, February 11, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 4, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3190 Filed 2–4–98; 12:45 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0057]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] as a stabilizer for polyethylene phthalate polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4578) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of calcium bis[monoethyl (3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] as a stabilizer for polyethylene phthalate polymers, complying with 21 CFR 177.1630, intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 22, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–2909 Filed 2–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0003]

FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions; Availability.'' This guidance, generally referred to as the ''Day-1 guidance'' summarizes FDA's strategy for implementing the highest priority provisions of the FDA Modernization Act of 1997 (FDAMA) as it relates to the regulation of medical devices. The agency requests comments on this guidance.

DATES: Submit written comments by May 7, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of the guidance entitled ''FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of the Highest Priority Provisions'' to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–1), Food and Drug Administration, 1350 Picard Dr., Rockville, MD 20850, 301–443–4690.

SUPPLEMENTARY INFORMATION:

I. Background

The ''Day-1 guidance'' announced in this document summarizes FDA's strategy for implementing the highest priority provisions of the FDAMA (Pub. L. 105–115) as it relates to the regulation of medical devices. FDA identified these provisions as being of the highest priority for implementation because: (1) They become effective on or before February 19, 1998, the general effective date of the act; (2) they are expected to impact a large number of products/applications; or (3) they are of high interest to the device community. Unless an alternative method of implementation is specified in the statute, FDA generally plans to issue individual guidance documents to implement these provisions of the new law. The highest priority provisions of FDAMA identified in the guidance, and related sections in FDAMA, are:

(1) Early collaboration on data requirements for clinical studies (sections 201 and 205),

(2) Premarket approval application (PMA) collaborative review process (section 209),

(3) Scope of review: labeling claims for PMA's (section 205),

(4) PMA supplements for manufacturing changes (section 205),

(5) Premarket notification exemptions (section 206),

(6) Evaluation of automatic class III designation (section 207),

(7) Device standards (section 204),

(8) Scope of review: labeling claims for 510(k)'s (section 205),

(9) 90-Day review of 510(k)'s (section 209),

(10) Device tracking (section 211),

(11) Postmarket surveillance (section 212), and

(12) Dispute resolution (section 404).

The ''Day-1 guidance'' provides a section-by-section summary of each of these statutory provisions and describes FDA's general approach to implementing each such provision.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this Level 1 guidance is being issued without prior public comment because it affects immediate implementation of new statutory requirements. Comments and suggestions regarding this guidance may be submitted by May 7, 1998. Unless specified otherwise, other guidances referenced in this guidance will also be issued as Level 1 guidances that become effective upon publication, with the opportunity to submit comments to the agency during the implementation stage.

This guidance represents the agency's current thinking on the implementation

of the FDAMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so using the World Wide Web (WWW). The Center for Devices and Radiological health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. The CDRH home page, which is updated on a regular basis, includes the guidance entitled ''FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters and other device-oriented information. The guidance will be available on the CDRH home page at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, on or before May 7, 1998, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–3002 Filed 2–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–78]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB maybe obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, an hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 29, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee Letter: Revision to the Section 235(r) Refinancing Procedures.

Office: Housing.

OMB Approval Number: 2502–0456.

Description of the Need for the Information and its Proposed Use: The information is collected by the originating lender from the mortgage application and is used by the originating lender to process the applications for Section 235(r) mortgage insurance and assistance. The applications are underwritten and certified by the originating lender. The information is needed for the evaluation of the applications, the Department's financial management and accounting system(s), and the Department's monitoring of the origination and servicing activities of the lender.

Form Number: HUD–93114.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Requency of response	×	Hours per response	=	Burden hours
HUD–93114	23,000		1		.28		6,437

Total Estimated Burden Hours: 6,437.

Status: Reinstatement, without changes.

Contact: Diane L. Lobasso, HUD, (202) 708–2700 x2191 Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: January 29, 1998.

[FR Doc. 98–2945 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–79]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB maybe obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 29, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands.

Office: Housing.

OMB Approval Number: 2502–0340.

Description of the Need for the Information and its Proposed Use: Indian tribes applying for single family mortgage insurance must certify that they have adopted an eviction procedure in the event of foreclosure. HUD will use this information to determine that the property and tribal member (borrower) is eligible for mortgage insurance and also to verify mortgage security.

Form Number: None.

Respondents: State, Local, or Tribal Government and Business or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Verification of Lien	1,000		1		.5		500
Certification	200		1		.5		100
Appeal of Decision	20		1		.5		10

Total Estimated Burden Hours: 610.

Status: Reinstatement, with changes.

Contact: Jeanette F. Walton, HUD, (202) 708–2700 x3694, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 29, 1998.

[FR Doc. 98–2946 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–80]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the

office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 27, 1998.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Survey of Tenants in Certain Properties With HUD-Held and Foreclosed Mortgages.

Office: Housing.

OMB Approval Number: 2502–0410.

Description of the Need for the Information and its Proposed Use: The Department is required to preserve the number of units which are occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever is greater. HUD must also inquire as to the income levels of unassisted tenants for whom information is not available.

Form Number: None.

Respondents: Individuals or Households and the Federal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey of HUD-Held Inventory	9,881		1		.05		494
Unit Owners	85		1		.50		43

Total Estimated Burden Hours: 537.

Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 27, 1998.

[FR Doc. 98–2947 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–81]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey,Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 2, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Mark to Market Portfolio Reengineering Demonstration Program Guidelines.

Office: Housing.

OMB Approval Number: 2502–0529.

Description of the Need for the Information and its Proposed Use: The project owner's request to participate is needed to initiate processing and to provide information necessary to ensure that the project meets statutory eligibility requirements to participate in the Demonstration Program. Notices to tenants, to units of general local government, and to lenders are intended to comply with statutory requirements for such notification, and to obtain information that may provide for more informed decision making.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit and Not-for-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	150		1		33.33		5,000

Total Estimated Burden Hours: 5,000.

Status: Reinstatement, without changes.

Contact: Dan Sullivan, HUD, (202) 708–2300 x2062, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 2, 1998.

[FR Doc. 98–2948 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–82]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 2, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Survey of Participants in the Community Development Work Study Program.

Office: Policy Development and Research.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: The objective of the survey is to evaluate the participants in the Community Development Work Study Program to ascertain if the program has met the goals in preparing minority and disadvantaged students with opportunities in community building.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	750		1		.42		313

Total Estimated Burden Hours: 313.

Status: New.

Contact: Karna L. Wong, HUD, (202) 708–0574 x125; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–2949 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has

reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy:* Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: January 29, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 2/6/98

Suitable/Available Properties

Buildings (by State)

Rhode Island

Bldg. 69
Naval Education and Training Center
Newport Co: Newport RI 02841–
Landholding Agency: Navy
Property Number: 779810052
Status: Unutilized
Comment: 600 sq. ft., concrete, presence of asbestos, most recent use—storage, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 164
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810046
Status: Excess
Reason: Extensive deterioration

Bldg. 3152
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810047
Status: Excess
Reason: Extensive deterioration

Bldg. 439
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810048
Status: Excess
Reason: Extensive deterioration

Bldg. 3073
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810049
Status: Excess
Reason: Extensive deterioration

Bldg. 173
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810050
Status: Excess
Reason: Extensive deterioration

Bldg. 255
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810051
Status: Excess
Reason: Extensive deterioration

New Mexico

Bldg. 1, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810001
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 2, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 24, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810003
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 86, TA–33
Los Alamos National Laboratory

Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810005
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 88, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810006
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 89, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810008
Status: Underutilized
Reason: Secured Area

Bldg. 3, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810009
Status: Unutilized
Reason: Secured Area

Bldg. 4, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810010
Status: Unutilized
Reason: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810011
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810012
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810013
Status: Unutilized
Reason: Secured Area

Bldg. 212, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810014
Status: Unutilized
Reason: Secured Area

Bldg. 228, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810015
Status: Unutilized
Reason: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810016
Status: Unutilized
Reason: Secured Area

Bldg. 10, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 27, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810018
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 63, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 515, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810022
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 518, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810023
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 519, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810024
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 520, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810025
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

North Carolina

Bldg. 1228
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779810053
Status: Excess
Reason: Secured Area

Ohio

Ohio River Division Lab
11275 Sebring Drive
Forest Park Co: Hamilton OH 45240–
Landholding Agency: GSA
Property Number: 549810007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–OH–808

[FR Doc. 98–2620 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permits issued for the months of September 1997–December 1997.

Notice is hereby given that the U.S. Fish and Wildlife Service, Region 3, has taken the following action with regard to permit applications duly received in accordance with section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*). Each permit listed as issued was granted only after it was determined that is was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Name	Permit No.	Date issued
Malacological Consultants	PRT 801471 A4*	09/18/97
Malacological Consultants	PRT 801471 A5*	09/30/97
Warren W. Pryor	PRT 827310	09/30/97
Ronald L. Richards	PRT 829873	10/23/97
William D. Hendricks	PRT 830273	11/03/97
Herbert M. Jones PRT	831781	10/02/97
3D/International Inc	PRT 834569	12/19/97
R.D. Zande & Associates	PRT 834589	12/19/97

*indicates permit amendment.

Additional information on these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, telephone 612/713–5332, during normal business hours (7:30 a.m.–4:00 p.m.) weekdays.

Dated: January 29, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–2940 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fishery Management Council; Notice of Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, review the 1997 fishery season, and discuss and plan management of the 1998 season, including fish allocation. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 3:00 p.m. to 5:00 p.m. on Wednesday, February 25, 1998; from 9:00 a.m. to 5:00 p.m. on Thursday, February 26, 1998; and from 8:30 a.m. to 11:30 a.m. on Friday, February 27, 1998.

PLACE: The meeting will be held at the Doubletree Hotel, 1929 Fourth Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639)

Dated: January 29, 1998.

Thomas Dwyer,

Acting Regional Director

[FR Doc. 98–2970 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Production estimate, Quarterly Construction Sand and Gravel and Crushed and Broken Stone.

Current OMB approval number: 1032–0090.

Abstract: The collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, industry, education programs, and the general public. One publication is the ''Mineral Commodity Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Bureau form numbers: 6–1209–A and 6–1209–A–A.

Frequency: Quarterly and Annually.

Description of respondents: Producers of industrial minerals and metals.

Annual Responses: 3,418.

Annual burden hours: 855.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 98–2976 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[HE–931–9941–03]

Extension of Approved Information Collection, OMB Number 1004–New, Formerly 1032–0112

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of the existing approval to collect certain information from owners and operators of helium-bearing natural gas wells and transmission lines interested in data pertaining to natural gas analyses when data are released for publication. This information allows BLM to evaluate the helium resources of the United States.

DATES: BLM must receive comments on the proposed information collection by April 7, 1998 to assure its consideration of them.

ADDRESSES: *Mail comments to:* Director (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Send comments via Internet to: bgage@he.blm.gov. Please include ''ATTN: 1004–NEW'' and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Helium Operations, 801 South Fillmore, Suite 500, Amarillo, Texas. BLM will make comments available for public review at the South Fillmore address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Brent Gage at (806) 324–2659.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM Form 6–1579–A to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The Form, called GAS WELL DATA—SURVEY OF HELIUM–BEARING NATURAL GAS, provides for the gas sampling and analysis program used to locate helium occurrences in natural gases. The program is carried on in compliance with 74 Stat. 920, Public Law 104–273, Helium Privatization Act of 1996. The knowledge of helium occurrences is an integral part of the Governments conservation program. The data supplied on the form are used to evaluate the extent of any helium resources existing in the natural gas.

BLM uses the information provided by the applicants to evaluate the helium resources of the United States. If BLM did not collect this information, it would not have good knowledge of the nature, location and extent of domestic helium resources. The location and development of helium reserves could not be done; therefore, long range helium production and conservation plans could not be carried out and an assured supply of helium to the Federal Government would not be available.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average 15 minutes per response. The respondents are owners and operators of helium-bearing natural gas wells and transmission lines. The frequency of response is annual. The number of responses per year is estimated to total 200. The estimated total annual burden on new respondents is about 50 hours. BLM is specifically requesting your comments on its estimate of the amount of time it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: January 30, 1998.

Carole Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 98–3070 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Lower Snake River District Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise to discuss management of redband trout and sage grouse in southwest Idaho, as well as implementation of the Payette River Recreation Fee Demonstration Project.

DATES: February 26, 1998. The meeting will begin at 12:15 pm. Public comment periods will be held beginning at 1:00 pm and 5:30 pm.

ADDRESSES: The Lower Snake River District Office is located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: January 28, 1998.

Howard Hedrick,

Resource Coordinator.

[FR Doc. 98–2963 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1220–00]

Management Orders for Public Lands: Trinity, North Fork Trinity and Klamath Wild and Scenic Rivers

AGENCY: Bureau of Land Management, Interior, Redding Field Office, Redding, California.

ACTION: Management orders on public lands.

SUMMARY: Under the authority of the Wild and Scenic Rivers Act (16 USC 1281(c)) and Federal Regulations at 43 CFR 8351.2.1: ''The authorized officer may issue written orders which close or restrict the use of the lands and water surface administered by the Bureau of Land Management within the boundary of any component of the National Wild and Scenic River System when necessary to carry out the intent of the Wild and Scenic Rivers Act.''

The following orders apply to all public lands managed by the Bureau of Land Management occurring within the management boundaries of the Trinity, North Fork Trinity, and Klamath National Wild and Scenic Rivers. This includes public lands along the Trinity

River from Lewiston Dam downstream to approximately ¼ mile below the confluence with the North Fork Trinity River; the North Fork Trinity River from the confluence of the East Fork of the North Fork Trinity River downstream to the confluence with the Trinity River; and the Klamath River from Iron Gate Dam downstream to the confluence with Ash Creek. The boundaries of these components of the National Wild and Scenic River System are further delineated as corridors in the BLM Redding Resource Management Plan (July 1993).

SUPPLEMENTARY INFORMATION: The following acts are prohibited at all times:

1. Camping in excess of 14 days per calendar year, or in areas closed to camping, without proper authorization. (Camping is defined as the use of tents or shelters of natural or synthetic material, preparing a sleeping bag or bedding material for use, or mooring of a vessel, or parking a vehicle or trailer for the apparent purposes of occupancy. Occupancy is defined as the taking, maintaining or holding possession of a camp or residence on public land, either by personal presence or by leaving property on the site.)

2. Construction, maintenance, occupation or possession of a structure, building, improvement, roadway, fence, gate or enclosure without proper authorization.

3. Building, maintaining, attending or using a fire without a necessary fire permit, or when open fires are prohibited, or leaving a fire unattended or performing any act in violation of a fire prevention order.

4. Improper disposal of debris or waste, including but not limited to: litter, garbage, trash, junk, petroleum products, abandoned vehicles, animal carcass or human waste.

5. Disorderly conduct.

6. Creating a hazard or a nuisance.

7. Grazing of livestock without proper authorization.

8. Failure to pay required campground fees.

9. Cutting, damaging or removal of vegetation without proper authorization. (For the purpose of building a legal campfire on public lands, you are authorized to gather dead and down wood.)

10. Removal of mineral materials in excess of 1,000 pounds per year or when prohibited by signs, without proper authorization.

11. Blading, digging or excavating the ground or river bottom with motorized equipment (including suction dredges in areas closed to mining) without proper authorization.

12. Destruction or removal of U. S. Government property.

13. Signing, posting or improperly asserting title to public land which gives the impression of private ownership to such land. (This does not include the proper identification of mining claims or the restriction of unauthorized removal of locatable minerals from such claims).

14. Operation of a motorized vehicle on public lands, trails or roadways closed to motorized vehicle use.

15. Failure to obtain, or violating stipulations or conditions of a special recreation permit, as required by Federal Regulations 43 CFR part 8372, for commercial, competitive or special use areas.

16. Leave unattended personal belongings longer than 10 days unless authorized.

17. Discharge of firearms in an unsafe manner, in an unsafe direction, where legally prohibited, or at items which can shatter into sharp fragments, including, but not limited to: all glass items, ceramics and television screens.

Any person convicted of violating any of the above orders shall be punished by a fine of not to exceed $500, or by imprisonment for a period not to exceed 6 months, or both, and shall be adjudged to pay all costs of proceedings (43 CFR 8351.2.1(f)).

These orders take effect on the date of signing (January 22, 1998), and shall remain in effect until rescinded by the Area Manager of the Bureau of Land Management's Redding Resource Area.

Charles M. Schultz,

Area Manager.

[FR Doc. 98–2967 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Production Accounting and Auditing System Oil and Gas Reports, OMB Control Number 1010–0040.

FORMS: Form MMS–4051, Facility and Measurement Information Form (FMIF), Form MMS–4054, Oil and Gas Operations Report (OGOR), Form MMS–4055, Gas Analysis Report (GAR), Form MMS–4056, Gas Plant Operations Report (GPOR), Form MMS–3160, Monthly Report of Operations (MRO), Form MMS–4058, Production Allocation Schedule Report (PASR).

DATES: Written comments should be received on or before April 7, 1998.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, PO Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e-Mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is authorized to manage lands, to collect royalties due, and to distribute royalty funds.

The Minerals Management Service is responsible for the royalty management functions assigned to the Secretary. The Production Accounting and Auditing System (PAAS) is a part of the ongoing MMS effort to improve management of the Nation's resources. PAAS is an integrated computer system based on production and processing reports submitted by lease operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. It is used in conjunction with another MMS integrated computer system, the Auditing and Financial System (AFS), which provides payment and sales

volumes and values as reported by payors. AFS data are compared to production and processing volumes reported on PAAS, enabling MMS to verify that proper royalties are being paid for the minerals produced.

MMS has developed six forms for gathering oil and gas production data from industry. One form initially established a data base for all storage facilities and measurement points. Four forms are used to collect ongoing production and disposition data, which are then matched with sales and royalty data reported to the AFS. Additionally, data collected from these forms is edited and electronically sent to the Bureau of Land Management (BLM) and to the MMS Office of Offshore Minerals Management (OMM). BLM and OMM use the data to perform inspections, reviews, and reservoir analysis. The sixth form is used to collect information from independent sources to corroborate production data.

Operators of 2,400 leases, mainly Outer Continental Shelf (OCS), will report monthly production to the PAAS using Form MMS–4054, OGOR. During FY 1998 the total number of OGOR reports expected, including modified reports, is estimated to be about 59,000. Currently 30 percent of OGOR documents are submitted electronically. At .5 hour per paper report, and .25 per electronic report, the FY 1998 burden will be 25,075 hours.

Gas production from some leases is processed before royalties have been determined. Operators of such leases must submit Form MMS–4055, GAR, if requested by MMS. During FY 1998 the total number of GAR reports expected, including modified reports, is estimated to be 10. At .25 hour per response, the FY 1998 burden will be 2.5 hours. Onshore operators reporting on Form MMS–3160 are not required to use the GAR to report gas production.

About 32 gas plant operators will submit Form MMS–4056, GPOR, each month during FY 1998. The total number of GPOR reports expected, including modified reports, is 450. At an .5 hour per response, the burden will be 225 hours in FY 1998.

MMS has assumed responsibility from BLM for the processing of monthly operations reports from all onshore oil and gas lease operators. In FY 1998, 2,750 operators will report monthly to MMS using Form MMS–3160, MRO. Most operators, who do not use electronic reporting, use the model Form MMS–3160 which is preprinted with information that remains relatively the same from month to month. The models are printed and mailed by MMS, and the onshore operators fill in monthly production data. Currently 40 percent of MRO documents are submitted electronically. The total number of MRO reports, including modified reports, is 290,000. At .25 hour per paper report and .12 hour per electronic report, the FY 1998 burden will be 57,420 hours.

About 100 operators will submit Form MMS–4058, PASR, to report commingled production. The total number of PASR reports, including modified reports, is 7,200. At .25 hour per response, the FY 1998 burden will be 1,800 hours.

The total FY 1998 burden is estimated to be 84,522.5 hours [25,075 (OGOR) + 2.5 (GAR) + 225 (GPOR) + 57,420 (MRO) + 1,800 (PASR)].

Dated: February 3, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–3075 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Burlington Resources Offshore Inc., Pipeline Activity, SEA No. P–11587.	Eugene Island Area, Blocks 204 and 205, Leases OCS 0804 and 0805, 35 miles offshore the coast of Louisiana.	10/16/97
Coastal Oil and Gas Corporation, Pipeline Activity, SEA No. P–11617.	East Cameron Area; Blocks 192, 193, and 189; Leases OCS–G 8651, 8650, and 8418; 56 miles offshore the Louisiana coast.	01/08/98
Chevron U.S.A., Pipeline Activity, SEA No. OCS–G 16099.	Mobile Area, Block 864, Lease OCS–G 16099, 5 miles south of the nearest coastline in Alabama.	11/20/97
Ocean Energy, Inc., Pipeline Activity, SEA No. OCS–G 18816.	Ship Shoal Area; Blocks 65, 66, and 69; Lease OCS–G 18816, 3 miles south of the nearest coastline in Louisiana.	12/01/97
Bayou City Pipelines, Inc., Pipeline Activity, SEA No. OCS–G 18817.	Ship Shoal Area, Blocks 66 and 69, Lease OCS–G 18817, 4–5 miles south of the nearest coastline in Louisiana.	11/06/97
Delos Offshore Company, Pipeline Activity, SEA No. OCS–G 18843.	East Cameron Area; South Addition; Blocks 373, 368, 355, 350, 349, and 338; Lease OCS–G 18843; 114 miles south of Cameron Parish, Louisiana.	01/07/98
Coastal Oil & Gas Corporation, Exploration Activity, SEA No. N–5696A.	Garden Banks Area, Block 139, Lease OCS–G 17295, 123 miles southeast of the nearest coastline off Galveston Island, Texas.	12/22/97
ORYX Energy Company, Development Activity, SEA No. S–4507U.	High Island Area; East Addition; South Extension; Blocks A–384, A–378, and A–379; Leases OCS–G 3316, 13807, and 13808; 110 miles southeast of the nearest coastline off Galveston Island, Texas.	11/26/97
Chevron, U.S.A., Inc., Exploration Activity, SEA No. S–4529.	Mobile Area, Block 863, Lease OCS–G 5748, 18 miles south of Mobile County, Alabama.	11/17/97
Mobil Exploration & Producing U.S., Inc., Development Activity, SEA No. S–4532A.	Mobile Area, Block 914, Lease OCS–G 7846, 17 miles south of Mobile County, Alabama.	12/01/97
Apache Corporation, Structure Removal Operations, SEA No. ES/SR 97–068A.	Eugene Island Area, Block 278, Lease OCS–G 3996, 50 miles south of Terrebonne Parish, Louisiana.	12/18/97

Activity/operator	Location	Date
Seagull Energy Corporation, Structure Removal Operations, SEA No. ES/SR 97–143.	North Padre Island Area, Block A–72, Lease OCS–G 11213, 39 miles east of Padre Island, Texas.	10/15/97
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–146A.	Vermilion Area, Block 275, Lease OCS–G 10678, 73 miles from the Louisiana coastline.	11/07/97
Chevron U.S.A. Production, Co., Structure Removal Operations, SEA Nos. ES/SR 97–155 and 97–156.	Bay Marchand Area, Block 2; South Timbalier Area, Block 23; Leases OCS 0386 and 0369; 7 miles south of the Louisiana coastline.	11/12/97
Seneca Resources Corporation, Structure Removal Operations, SEA No. ES/SR 97–170.	Galveston Area, Block 211, Lease OCS–G 6094, 13 miles south of the Texas coastline.	12/18/97
Sonat Exploration Company, Structure Removal Operations, SEA No. ES/SR 97–177.	High Island Area, Block 39, Lease OCS–G 4078, 17 miles south of the Texas coastline.	10/27/97
Forcenergy, Inc., Structure Removal Operations, SEA No. ES/SR 97–179.	East Cameron Area, Block 300, Lease OCS–G 6643, 90 miles south of the Louisiana coastline.	12/19/97
Seagull Energy E&P Inc., Structure Removal Operations, SEA Nos. ES/SR 97–180 through 97–185.	Eugene Island Area, Block 45, Lease OCS–G 3991, 14 miles south of Iberia Parish Louisiana.	10/10/97
Houston Oil & Mineral Corporation, Structure Removal Operations, SEA Nos. ES/SR 97–188 and 97–189.	Galveston Area, Blocks 330 and 349, Leases OCS–G 7251 and 13314, 25 miles from the Texas coastline.	01/21/98
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–190.	Eugene Island Area, Block 53, Lease OCS 0479, 13 miles southwest of St. Mary Parish, Louisiana.	10/10/97
IP Petroleum Company, Structure Removal Operations, SEA Nos. ES/SR 97–191 & 97–192.	High Island Area, Block 108, Lease OCS–G 15776, 16 miles southeast of Chambers County, Texas.	10/10/97
Hall-Houston Oil Company, Structure Removal Operations, SEA No. ES/SR 98–001.	West Cameron Area, Block 342, Lease OCS–G 10576, 51 miles south-southeast of Cameron Parish, Louisiana.	10/27/97
Hall-Houston Oil Company, Structure Removal Operations, SEA No. ES/SR 98–002.	West Cameron Area, Block 359, Lease OCS–G 14329, 54 miles south-southwest of Cameron Parish, Louisiana.	10/21/97
Burlington Resources, Structure Removal Operations, SEA No. ES/SR 98–004.	Brazos Area, Block 435, Lease OCS–G 7219, 18 miles southeast of Matagorda County, Texas.	11/14/97
Newfield Exploration Company, Structure Removal Operations, SEA No. ES/SR 98–005.	Galveston Area, Block 296, Lease OCS 0714, 30 miles southeast of Galveston Island, Texas.	12/15/97
The Houston Exploration Company, Structure Removal Operations, SEA No. ES/SR 98–006.	East Cameron Area, Block 44, Lease OCS–G 5022, 15 miles south of Cameron Parish, Louisiana.	11/26/97
Energy Resources Technology, Inc., Structure Removal Operations, SEA No. ES/SR 98–007.	West Cameron Area, Block 277, Lease OCS–G 4761, 65 miles south of Cameron Parish, Louisiana.	12/15/97

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: February 2, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–2968 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

NPS Franchise Fee Determination Guidelines

AGENCY: National Park Service, Interior.

ACTION: Consideration of public comments on NPS franchise fee determination guidelines.

SUMMARY: On December 5, 1997, the National Park Service (NPS) again published for public comment that portion of its concession management staff manual (NPS–48) dealing with guidelines for concession contract franchise fees. Comments were invited on, among other matters, specific proposed changes in concept or in detail, for dealing with concession contract franchise fees. The comment period has closed and NPS has duly considered the comments received.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Yearout, Program Manager, Concession Program, National Park Service, 1849 C Street, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The franchise fee guidelines contained in NPS–48 were adopted by NPS on December 31, 1986, after receipt and consideration of public comments pursuant to **Federal Register** notification. The guidelines were amended on July 20, 1995, after consideration of public comment pursuant to **Federal Register** notification. In addition, the guidelines were clarified on August 11, 1997, after consideration of pubic comment pursuant to **Federal Register** notification. NPS is presently considering the possibility of significantly revising the guidelines. If it chooses to do so, the proposed revisions will be made available for public comment through **Federal Register** notification.

Two comments were received in response to the December 5, 1997, **Federal Register** notice. One commenter expressed concern that franchise fee adjustments made as part of a concession contract fee reconsideration are neither easily quantifiable nor subject to any ''cap'' as to how much a fee may be raised as a result of the reconsideration. The commenter considers that franchise fees should be quantifiable for the term of a contract. The commenter suggested that this would allow better calculation of prospective financial returns, increase the ability to obtain financing, and decrease the risk of bidding to obtain a concession contract. Specifically, the commenter suggested that the basis for fee adjustments should be a pre-determined formula established at the outset of the contract.

NPS considers that this comment has merit in some respects. However, it notes that under current concession contract provisions, franchise fees may be adjusted upwards or downwards as circumstances warrant during the term of the contract. The present system, accordingly, treats the concessioner and the Government alike with respect to franchise fee adjustments.

The commenter also suggested that in analyzing franchise fees, the complete financial history of the operation should be considered. NPS notes that its current guidelines permit analysis of as many years of financial history as is appropriate and that during a franchise fee consideration the concessioner is likewise able to provide analysis as it sees fit with respect to the operation's financial returns and history.

Finally, the commenter noted that, although, in theory, the NPS consideration of industry ratios would seem equitable in analyzing franchise fees, published statistics in this regard are not readily comparable to NPS concession operations in light of their more extensive mix of facilities and services and other factors related to operations in areas of the national park system. In addition, the commenter suggested that the ratios provided in industry statistics have such a wide swing in results that any assignment of ranking would be purely subjective on the part of NPS in attempting to recommend a new franchise fee. NPS has received similar criticisms of using published industry statistics in franchise fee analysis on other occasions, including in prior responses to **Federal Register** requests for public comment on NPS franchise fee guidelines.

NPS agrees that consideration of published industry statistics in and of itself would not be an appropriate means to establish a franchise fee. However, the NPS guidelines only contemplate consideration of published statistics as one starting point for franchise fee analysis. The guidelines call for analysis of such statistics to account for differences between the general industry and the particular circumstances of the concession operation in question. In addition, industry statistics as part of a franchise fee reconsideration process are shared with the concessioner which may dispute their validity and provide alternative statistics. A decision on an adjusted franchise fee is made on the basis of all the information developed during the reconsideration process, including discussions with the concessioner. In addition, if NPS and the concessioner cannot agree on an adjustment to the franchise fee, up or down as the case may be, the concessioner is entitled to request advisory arbitration on the issue and a final decision from the Secretary of the Interior based upon the entire record of the matter and the views of the arbitration panel. In short, NPS appreciates that published statistics cannot be the exclusive means of analyzing franchise fees and that they have shortcomings which must be taken into account. Nonetheless, NPS considers it appropriate to use published statistics, with appropriate adjustment and consideration of their limitations, as a franchise fee analytical tool.

The other comment received was concerned that NPS should permit public comment on the specifics of its proposed changes to its franchise fee guidelines. This NPS intends to do through **Federal Register** notification if significant changes are proposed.

Having considered the comments received, and similar comments received in response to past **Federal Register** notification, NPS believes that its present franchise fee guidelines are adequate and hereby re-adopts them to the extent legally necessary. However, NPS does consider that there may be other and perhaps better ways to deal with concession contract franchise fees and may suggest significant revisions to the present guidelines in the near future. If this occurs, further public comment will be invited on the revisions and the comments received in response to the December 5, 1997, notice and prior notices will be taken into due account as well in reaching a final decision on any proposed revisions.

Dated: January 23, 1998.

Wendelin M. Mann,

Acting Concession Program Manager.

[FR Doc. 98–2977 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement and Conduct a Public Tour and Meetings Initiating a General Management Plan Amendment for the Green Spring Unit of Colonial National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of public tour and meetings and notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: This notice announces upcoming public scoping meetings and a site tour initiating a General Management Plan Amendment for the Green Spring unit of Colonial National Historic Park and the intent to publish an Environmental Impact Statement in association with the General Management Plan Amendment.

Public Tour

Date and Time: Sunday, February 22, 1998 from 2 to 4 PM.

Address: Meet at Jamestown Visitor Center on Jamestown Island, 1368 Colonial Parkway, Jamestown, VA 23081.

Public Meetings

Dates and Times: Friday, February 27, 1998 from 2–4 PM and Saturday February 28, 1998 from 10–2 noon

Address: Same as above.

The purpose of the tour and meetings is to describe the general management planning effort beginning for Green Spring, a unit of Colonial National Historical Park, and to solicit public input about its future management. The agenda for the meetings consists of an overview of the project, a review of possible conceptual approaches to site management, and an open discussion of citizen concerns.

We encourage all who have an interest in Green Spring's future to attend or to contact the park superintendent by letter, telephone or e-mail. Minutes of the meetings will be available for public review four weeks after the meeting at the Visitor Center.

FOR FURTHER INFORMATION CONTACT: Superintendent, Colonial National Historical Park, Post Office Box 210, Yorktown, Virginia 23690, (757) 898–3400.

Dated: January 30, 1998.

Kathy Schlegel,

Project Manager, Philadelphia Support Office, Stewardship and Partnerships Team.

[FR Doc. 98–2978 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Parkwide Trail Plan Open House and Intent To Publish an Environmental Impact Statement

AGENCY: National Park Service; Interior.

ACTION: Notice of open house and notice of intent to publish Environmental Impact Statement.

SUMMARY: This notice announces an upcoming open house for the Delaware Water Gap National Recreation Area Parkwide Trail Plan and the intent to publish an environmental impact statement in association with the trail plan.

Open House Date and Time: Friday, February 27, 1998 from 3–7:30 p.m.

Address: Bushkill School, Church Lane, Bushkill, PA 18324.

The purpose of the open house is to describe the park trail planning effort at Delaware Water Gap National Recreation Area and to gain public input relating to the future designation of a parkwide trail system. The agenda for the open house consists of an informal overview of the project. Citizens are encouraged to arrive at any time between 3 and 7:30 pm to engage in an open discussion.

We encourage all who have an interest in the park's future trail system to attend or contact the park Superintendent by letter or telephone. Minutes of the meeting will be available for public review four weeks after the open house at Bushkill School.

FOR FURTHER INFORMATION CONTACT: Helen Mahan Forester, Community Planner, National Park Service, U.S. Custom House, 200 Chestnut St., Philadelphia, PA 19106, 215/597–6483.

Dated: January 26, 1998.

Bob Kirby,

Acting Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002
Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802
Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, D.C. 20515–3815
Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

[FR Doc. 98–2979 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed Central Valley Project Improvement Act (CVPIA) Interim Land Retirement Program, Central Valley Project (CVP), California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental assessment and notice of scoping meetings.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA), and the Council of Environmental Quality Regulations (40 CFR 1506.6), the Bureau of Reclamation (Reclamation) announces the intent to prepare a Programmatic Environmental Assessment (EA) for the proposed CVPIA Interim Land Retirement Program. The proposed action supports implementation of section 3408(h) of the CVPIA, Pub. L. 102–575, which authorized the Land Retirement Program, based on recommendations contained in the final report of the San Joaquin Valley Drainage Program (SJVDP, September 1990).

The purpose of the proposed action is to identify potential impacts to the environment from the permanent retirement of land and the disposition of any water allocation that may be acquired under this program. Disposition of water may include out-of-district transfers, primarily for environmental purposes, or the water may stay within a district to be used to establish vegetation for the purposes of wildlife habitat enhancement and drainage reduction, or the water may be reallocated among the district's water users as supplemental water. Regardless of where the water is to be used or for what purpose, the water may not be applied to lands where it will contribute to drainage problems, as set forth in the interim program guidelines (revised 11/97). The need of the proposed action is to reduce subsurface drainage and restore wildlife habitat values in the San Joaquin Valley. The action complements the U.S. Fish and Wildlife Service Draft Recovery Plan for Upland Species of the San Joaquin Valley, California, 1997.

The chief area of concern is the western side of the San Joaquin Valley from the Sacramento-San Joaquin Delta on the north to the Tehachapi Mountains south of Bakersfield, California. The Proposed Action will focus on the federal CVP service area within this region.

DATES: Public scoping meetings to receive oral and written comments will be held on the following dates:

- Tuesday, February 24, 1998, from 7:00 to 9:00 p.m., Delano, California.
- Wednesday, February 25, 1998, from 2:00 to 4:00 p.m. and 7:00 to 9:00 p.m. Fresno, California.
- Thursday, February 26, 1998, from 7:00 to 9:00 p.m., Santa Nella, California.

Written comments on the project scope should be sent to Reclamation by March 18, 1998. Comments received after this date will be considered, but will not be included in the resulting scoping report.

ADDRESSES: Public scoping meetings will be held at the following locations:

- The Fruit Tree, 2343 Gerard Street, Delano, California 93215, telephone (805) 725–9532.

• The Fresno Holiday Inn Airport, 5090 East Clinton Avenue, Fresno, California 93727, telephone (209) 252–3611.

• Anderson's Pea Soup, 12411 North Howard Street, Santa Nella, California 95322, telephone (209) 826–1685.

Written comments on the project scope should be sent to Mr. Robert May, Program Manager, South-Central California Area Office, Bureau of Reclamation, 2666 N. Grove Industrial Drive, Fresno, CA 93727–1551.

FOR FURTHER INFORMATION, CONTACT: Mr. May, telephone (209) 487–5137, fax (209) 487–5130.

SUPPLEMENTARY INFORMATION: A comprehensive study of agricultural drainage and drainage-related problems on the west side of the San Joaquin Valley resulted in the management plan presented in the SJVDP final report, an interagency study, published in 1990. This report found that the conditions associated with irrigation and agricultural drainage in the San Joaquin Valley are not new, as inadequate drainage and accumulation of salts have been persistent problems in parts of the valley for more than a century, making some cultivated lands unusable as far back as the 1880's. Widespread acreages of grain, first planted on the western side of the valley in the 1870's, were irrigated with water from the San Joaquin and Kings rivers. This type of farming spread until, by the 1890's, the rivers' natural flows were no longer adequate to meet the growing agricultural demand for water. Poor natural drainage conditions, coupled with rising groundwater levels and increasing soil salinity, meant that land had to be removed from production and some farms ultimately abandoned.

The development of irrigated agriculture in the San Joaquin Valley since 1900 resulted mainly from the improvements in pump technology. These improvements led to the development of large pumps that could lift water hundreds of feet from below ground. In time, heavy pumping triggered severe groundwater overdraft because more water was being extracted than was being replaced naturally. Ground water levels and hydraulic pressure fell rapidly and widespread land subsidence, or collapse of the soil's structure, began to occur. Subsidence results in an uneven land surface which can alter drainage patterns and may severely damage roads, buildings, or other structures. In western Fresno County some areas have subsided more than 30 feet. By the late 1950's, estimated overdraft in Kern County alone had reached 750,000 acre-feet per year.

Initial facilities of the federal Central Valley Project transported water from northern California through the Sacramento-San Joaquin Delta region via the Delta-Mendota Canal in 1951 to irrigate 600,000 acres of land in the northern part of the San Joaquin Valley. This water primarily replaced and supplemented San Joaquin River water that was diverted at Friant Dam and sent to the southern end of the east side of the San Joaquin Valley.

The CVP's San Luis Unit and the State Water Project, each authorized in 1960, began delivering Northern California water to agricultural lands on the west side of the southern San Joaquin Valley in 1968. Together these facilities provide water to irrigate 1 million acres. Authorization of the San Luis Unit also mandated construction of an interceptor drain known as the San Luis Drain, to collect irrigation drainage water from its service area and carry it to the Sacramento-San Joaquin River Delta for disposal. Reclamation's 1955 feasibility report for the San Luis Unit described the drain as an earthen ditch that would drain 96,000 acres. By 1962, Reclamation's studies had shown the need to build a concrete-lined canal to drain 300,000 acres. In 1964, plans added a regulating reservoir to temporarily retain drainage water. A decision was made in the mid-1970's to use the reservoir to store and evaporate drainage water until the drainage canal to the Delta could be completed.

Reclamation began construction of the San Luis Drain in 1968, and by 1975 had completed 85 miles of the main drain, 120 miles of collector drains, and the first phase of the regulating reservoir (Kesterson). In 1970, Kesterson Reservoir became part of a new national wildlife refuge managed jointly by Reclamation and the U.S. Fish & Wildlife Service (USFWS). Federal budget constraints and growing environmental concerns about releasing irrigation drainage water into the Delta halted work on the reservoir and the drain.

In 1975, Reclamation, the California Department of Water Resources and the State Water Resources Control Board formed the San Joaquin Valley Interagency Drainage Program to find a solution to the valley's drainage problem that would be economically, environmentally, and politically acceptable. The group's recommendation was to complete the drain to a discharge point in the Delta, near Chipp's Island. In 1981, Reclamation began a special study to fulfill requirements for a discharge permit from the State Water Resources Control Board.

The 1983 discovery of deformities and deaths of aquatic birds at Kesterson Reservoir altered the perception of drainage problems on the west side of the valley. Selenium poisoning was determined to be the probable culprit. In 1985, the Secretary of the Interior ordered that the discharge of drainage water to Kesterson be halted and the feeder drains closed. In 1986 Kesterson Reservoir was closed and the vegetation plowed under. Contamination problems similar to those identified at Kesterson are now appearing in other parts of the Valley, such as the Tulare Basin, which receives irrigation water from the State Water Project.

In 1984 the SJVDP was established as a joint Federal and State effort to investigate drainage and drainage-related problems and to identify possible solutions. The potential solutions were published in the program's September 1990 report. Due to environmental and political concerns, the report assumes that an out-of-valley solution, or completion of the San Luis Drain to the Delta would not be possible in the near future.

The concept behind land retirement is to stop irrigating lands with poor drainage and shallow groundwater high in concentrations of selenium, as a means of lowering the water table. Hydrologic studies have shown that if large blocks of land (+/−5,000 acres) were retired from irrigation, then the water table beneath those lands would drop.

The SJVDP final report recommended permanent retirement of 75,000 acres of irrigated lands that are characterized by low productivity, poor drainage, and high selenium concentration in shallow groundwater. Land retirement will cease irrigation on these selected lands as a means to reduce subsurface drainage problems. Additionally, retired lands will be rehabilitated to provide wildlife habitat. The chief area of concern is the western side of the San Joaquin Valley from the Sacramento-San Joaquin Delta on the north to the Tehachapi Mountains south of Bakersfield, California. The Proposed Action will focus on the federal CVP service area within this region.

Land Retirement Team

With the passage of the CVPIA in October 1992, Reclamation's Central Valley Water Project's (CVP) mission was changed to modify water flows to better support the needs of fish and wildlife throughout the project area. With the development of modern agriculture, railroads, and the highway

system, the face of California's landscape was changed forever, and over time the majority of the San Joaquin Valley's natural habitats have been converted to agricultural or urban uses.

Reclamation, a Department of the Interior agency, has responsibility for management of the CVP. In order to implement the provisions of the CVPIA as the people had intended, Reclamation needed the help of its sister agencies, the USFWS, and the Bureau of Land Management (BLM). These three agencies share the mission to protect and enhance the nation's natural resources for the continuing benefit of the American people. In particular, the USFWS and the BLM will act as the land managers for lands acquired under the land retirement program. Representatives from these three agencies make up the land retirement team and will work in partnership to accomplish the goals of the program.

Eligibility

Lands eligible for participation in the Land Retirement Program are those that receive CVP water under a contract executed with the United States, and are offered by willing sellers. Reclamation will not use condemnation to acquire land or other property interests.

Program Goals

The goals of the program are to:

- Provide drainage source reduction.
- Enhance fish & wildlife habitat.
- Acquire water for other purposes of the Act.

Potential Issues

It is anticipated that there may be some effect on local governments in the form of a loss to the tax base due to lands moving from private ownership to the tax-exempt Federal ownership status. There may be impacts to the local economy by taking irrigated agricultural lands out of production. There is some concern that the change in land use may result in soil degradation or increasing the salt content of the soil. Additional potential issues may arise, depending upon whether acquired water remains in the water district or is transferred out-of-district. Land retirement may have an effect on present and future available water supplies. Additionally, it is anticipated that there will be benefits to wildlife from the change in land use on the acquired parcels.

Federal, State and local agencies, and interested individuals are encouraged to participate in the scoping process for the EA to determine the range of issues and alternatives to be addressed.

Dated: February 2, 1998.

William Luce,

Area Manager, South-Central California Area Office.

[FR Doc. 98–2971 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and date: 8:30 a.m. to 4:30 p.m. on Monday, February 23, 1998 and 8:00 a.m. to 12 noon on Tuesday, February 24, 1998.

Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209.

Status: Open.

Matters to be Considered: Review of Amendments to Bylaws; Updates on Strategic Planning, Sex Offender Issues, Use of Video Technology for Training and Information Dissemination, Interstate Compact Issues; and Program Division Reports and Issues.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 98–3049 Filed 2–5–98; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,969 and NAFTA–01994]

Champion Aviation Products, Weatherly, Pennsylvania; Negative Determination Regarding Application for Reconsideration

By application dated January 6, 1998, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notices applicable to workers of the subject firm located in Weatherly, Pennsylvania, were signed on December 11, 1997. The TAA and NAFTA–TAA decisions were published in the **Federal Register** on January 6, 1998 (63 FR 577) and (63 FR 578), respectively.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers of Champion Aviation Products Division of Cooper Industries, Weatherly, Pennsylvania, producing aircraft displays and aircraft power supplies was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the worker firm's customers. None of the Champion Aviation Products' customers reported increased import purchases while decreasing purchases from Champion's Weatherly plant. A survey of firms to whom the subject firm submitted competitive bids revealed that those bids were awarded domestically.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company imports of aircraft displays and aircraft power supplies from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada. A survey of the major declining customers of Champion showed that none of the respondents purchased imports of aircraft displays or power supplies from Mexico or Canada. A survey of firms to whom the subject firm submitted competitive bids revealed that those bids were awarded domestically.

In support of their application for reconsideration, the company asserts that one of their lost contract bids was awarded to a foreign supplier. Review of this information shows that firm soliciting bids was a foreign company not a domestic operation. The Department does not survey foreign firms, including those located in Mexico or Canada. The Department must examine sales to U.S customers, and in this case, competitive bids offered by U.S. companies. Sales to customers outside of the United States would be considered to be for the export market. A loss of export market business cannot

be considered a basis for worker group certification.

The company also contends that some work performed at the Weatherly plant was shifted to the parent company's Sparta, Tennessee facility, which in turn has shifted some of their production to Mexico. The Department's records show that a NAFTA–TAA petition was never filed on behalf of the Cooper Industries workers in Sparta, Tennessee. Consequently, the shift in production from Weatherly, Pennsylvania to Sparta, Tennessee does not merit a NAFTA–TAA certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 27th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2916 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,888; Crown Pacific Remanufacturing, Redmond, OR

TA–W–33,932; Racal Datacom, Inc., Sunrise, FL

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,962; Fonda Group, Three Rivers, MI

Production of paper plates and bowles at the subject plant was transferred domestically during the relevant period.

TA–W–33,992; Claridge Products & Equipment, Inc., Harrison, AR

TA–W–33,965; Tri Americas, Inc., El Paso, TX

TA–W–34,001; Warren Petroleum Div., of NGC Corp., Santana, KS (Jayhawk Plant)

TA–W–33,972; Bemis Co., Inc., Banner packaging Div. Shelbyville & Murfreesboro, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,989; Allegheny Ludlum Corp.; Leechburg, PA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,865; Dlubak Corp., Glass Div., Freeport, PA

A corporate decision was made to cease the Glass Division production and transfer it to another domestic facility.

TA–W–33,878; Cabot Oil and Gas Corp., The Carlton District, Carlton, PA

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certification have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,082 & A; RMP, Pennsauken, NJ and Cinnaminson, NJ: December 2, 1996.

All workers engaged in employment related to the production of remanufactured auto components who became totally or partially separated from employment on or after December 2, 1996 are eligible to apply for trade adjustment assistance.

TA–W–34,059; Alcoa Fujikura, LTD, Campbellsburg, KY: November 18, 1996.

TA–W–33,875; Visy Paper Co (Formerly Menominee Paper), Menominee, MI: September 21, 1996.

TA–W–34,026 & A, B; Lukins Steel Co., Stainless Steel Group, Washington, PA, Houston, PA and Massillon, OH: November 6, 1996.

TA–W–33,967; Fedco Automotive Components Co., Inc., Buffalo, NY: October 23, 1996.

TA–W–34,003; Umbro North America, Fairbluff, North Carolina: October 28, 1996.

TA–W–34,119; American Trouser, Inc., Houston, MS: December 15, 1996.

TA–W–34,024; Columbia Footwear Corp., Hazleton, PA: January 24, 1998.

TA–W–34,094; W.R. Grace and Company-Conn., Grace Construction Products, Beltsville, MD: December 2, 1996.

TA–W–33,955; Koh-I-Noor, Inc., Bloomsburg, NJ: August 31, 1997.

TA–W–33,922; Anitec Image Corp., Binghamton, NY: December 14, 1997.

TA–W–33,983; Standard-Keil/Tap-Rite L.L.C., Allenwood, NJ: October 31, 1996.

TA–W–34,081; Kemet Electronics Corp., Shelby, NC

All workers of Kemet Electronics Corp., Shelby, NC including leased workers of Personnel Services Unlimited Manpower Temporary Services, Shelby, NC who became totally or partially separated from employment on or after November 24, 1996 are eligible to apply for trade adjustment assistance.

TA–W–34,117; Shape Video Division, Kennebunk, ME: December 11, 1996

TA–W–34,117A; Shape Midwest Division, Northbrook, IL: December 16, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number of proporation or the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFT–TAA–02038; Racal Datacom, Inc., Sunrise, FL

NAFTA–TAA–02002; Warren Petroleum, Div. of NGC Corp., Santana, KS (Jayhawk Plant)

NAFTA–TAA–01993 & A; Bemis Co., Inc., Banner Packaging Div., Shelbyville and Murfreesboro, TN

NAFTA–TAA–02045; Standard-Keil/ Tap-Rite, L.L.C., Allenwood, NJ

NAFTA–TAA–02024; Tri Americas, Inc., El Paso, TX

NAFTA–TAA–01783; K & K Farms,, Florida City, FL

NAFTA–TAA–01975; Lehigh Furniture Co., Marianna, FL

NAFTA–TAA–02000; Jetricks Corp., Selmer, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01939; Cabot Oil & Gas Corp., The Carlton District, Carlton, PA

The investigation revealed that criteria (1) and (4) have not been met. A significant number of proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural form or appropriate subdivision thereof) have not become totally or partially separated from employment. There has not been a shift in production by workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02027; Kemet Electronics corp., Shelby, NC Including Leased Workers of Personnel Services Unlimited and Manpower Temporary Services, Shelby, NC: November 13, 1996.

NAFTA–TAA–02080; Visy Paper, Formerly Menominee Paper Co., Menominee, MI: December 16, 1996.

NAFTA–TAA–02123; W.R. Grace and Company-Conn., Grace Construction Products, Beltsville, MD: December 2, 1996.

NAFTA–TAA–02026; Jam Enterprises, El Paso, TX: November 4, 1996.

I hereby certify that the aforementioned determinations were issued during the month of January 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 21, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2917 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,058]

Aquarius Furniture Manufacturing, El Paso, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997 in response to a worker petition which was filed on behalf of workers at Aquarius Furniture Manufacturing, El Paso, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 21st day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2919 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,050]

Bazflex USA, Gainesville, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997 in response to a worker petition which was filed on behalf of workers at Bazflex USA, Gainesville, Texas.

This case is being terminated because the petitioner who filed the petition on behalf of the workers is not a company representative or workers' representative. Section 221(a) of the Act specifies that the petition be filed by a group of workers or by the certified or recognized union or other duly authorized representative. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 27th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2913 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,810]

Lenzing Fibers Corp., Lowland, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Lenzing Fibers Corporation, Lowland, Tennessee. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33,810; Lenzing Fibers, Lowland, Tennessee (December 29, 1997)

Signed at Washington, DC, this 28th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2911 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,929]

Micro Stamping Corp., Somerset, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 1997 in response to a worker petition which was file on October 27, 1997 on behalf of workers at Micro Stamping, Somerset, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 21st day of January, 1998.

Grant D. Beale,

Acting Director, Office or Trade Adjustment Assistance.

[FR Doc. 98–2920 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,881]

National Food Products Limited, Reading, PA; Negative Determination on Reconsideration

On February 4, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented evidence that the Department's survey of customers of National Food Products Limited was incomplete. The notice was published in the **Federal Register** on February 13, 1997 (62 FR 6808).

The Department initially denied TAA to workers of National Food Products Limited because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that none of the customers purchased imported canned mushrooms during the January through June time period of 1995 and 1996.

The petitioner claims that the Department's customer survey did not evaluate imports of canned mushrooms for the July through December 1996 time period.

On reconsideration, the Department examined U.S. imports of mushrooms. Findings show U.S. imports of processed mushrooms increased both absolutely and relative to U.S. production from 1994 to 1995. From 1995 to 1996, U.S. imports of processed mushrooms declined absolutely.

On reconsideration, the Department conducted another survey of the major declining customers of the subject firm regarding their imports of 4 oz. retail canned mushrooms during July through December 1996. The survey results concluded that none of the customers purchased imported product during that period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of National Food Products Limited, Reading, Pennsylvania.

Signed at Washington, DC, this 16th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–2915 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,057]

The Oldham Com.; Burt, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997 in response to a worker petition which was filed on November 19, 1997 on behalf of workers at The Oldham Company, Burt, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2914 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,532 and TA–W–33, 532A]

Varon, Inc., Division of Biscayne Apparel, Inc., D/B/A/ Amy Industries, Inc., Colquitt, Georgia and Arlington, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 23, 1997, applicable to all workers of Varon, Incorporated, Division of Biscayne Apparel, Incorporated, d/b/a/ Amy Industries, Incorporated, Colquitt, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations

will occur at the Arlington, Georgia production facility when it closes in February, 1998. The workers are engaged in employment related to the production of children's undergarments.

The intent of the Department's certification is to include all workers of Varon, Incorporated adversely affected by increased imports of children's undergarments.

The amended notice applicable to TA–W–33,532 is hereby issued as follows:

All workers of Varon, Incorporation, Division of Biscayne Apparel, Incorporated, d/b/a/ Amy Industries, Incorporated, Colquitt, Georgia (TA–W–33,532) and Arlington, Georgia (TA–W–33,532A) who became totally or partially separated from employment on or after May 20, 1996 through July 23, 1999 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2918 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of collection of information for the National Job Corps Study.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 7, 1998.

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Daniel Ryan, Office of Policy and Research, Employment and Training Administration, Room N–5637, 200 Constitution Ave., NW, Washington, DC 20210, telephone 202–219–5782, extension 147 (this is not a toll-free number). Internet address: ETA.ED.RyanD@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Job Corps study is estimating the effects of their Job Corps experience on participants' postprogram employment, earnings, and related outcomes. It is also comparing the benefits and costs of the program. ETA is sponsoring the study in fulfilment of its responsibility to provide Congress and the public with information on the effectiveness of ETA's programs.

II. Current Actions

ETA requests that previously granted OMB clearance to collect data in support of the study be extended beyond the current expiration date of the clearance. The extension is necessary to complete collection of data through follow-up interviews conducted at 30 months after sample intake, which will be used to assess interim program impacts, and interviews conducted at 48 months after sample intake, which will be used to assess longer term effects of participating in Job Corps.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Evaluation of the Impacts of the Job Corps on Participants' Postprogram Labor Market and Related Behavior—Follow-up Questionnaire.

OMB Number: 1205–0360.

Affected Public: Individuals.

Cite/Reference/Form/etc: National Job Corps study follow-up questionnaire.

Total Respondents: 13,491.

Frequency: Two times (during period of extension, total of 4 times).

Total Responses: 35,596.

Average Time per Response: 40 minutes.

Estimated Total Burden Hours:

Interview	Administrations	Hours per response	Burden
12-Month Follow-up	*13,491	*.53	*7,150
30-Month Follow-up	11,979	.75	8,984
48-Month Follow-up	10,486	.75	7,865
Total	35,956	.67	23,999

*Actual.

Total Burden Cost: The total estimate cost of the study is $17,906,705. The cost of conducting baseline, 12-month, 30-month and 48-month interviews is $11,383,574.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 98–3052 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02068]

Aquarius Furniture Manufacturing, El Paso, Texas; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 11, 1997 in response to a petition filed on behalf of workers at Aquarius Furniture Manufacturing, El Paso, Texas.

In a letter dated January 15, 1998, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2921 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–002047]

Bazflex USA, Gainesville, TX; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 2, 1997 in response to a petition filed on behalf of workers at Bazflex USA, Gainesville, Texas.

This case is being terminated because the petitioner is not a representative of the company or of the workers. The NAFTA Implementation Act requires that a petition be filed by a group of three or more workers their union, a community base organization or other duly authorized representative. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th Day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2912 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing from the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, which is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and

Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 30th day of January, 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–2680 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10355, et al.]

Proposed Exemptions; Equitable Life Assurance Society

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request; and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 2847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York

[Application No. D–10355]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past and continuing lease (the Lease) of commercial space in One Boston Place by Equitable Separate Account No. 8, also known as the Prime Property Fund (PPF), to an Equitable affiliate, Equitable Real Estate Investment Management, Inc. (ERE), provided the following conditions are met:

(A) All the terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party;

(B) The interests of PPF for all purposes under the Lease is represented by an independent fiduciary, Lawrence A. Bianchi, a principal of the Codman Company in Boston, Massachusetts;

(C) The rent paid by ERE at all times under the Lease is no less than the fair market rental value of the property; and

(D) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

EFFECTIVE DATE: If granted, this exemption will be effective as of July 24, 1996.

Summary of the Facts and Representations

1. Equitable is a life insurance company organized under the laws of the State of New York. It is represented that Equitable is one of the largest life insurance companies in the United States and it offers a wide variety of insurance products and services. It is represented that Equitable provides funding, asset management and other services for several thousand employee benefit plans. In addition, Equitable sells interests in separate accounts as investments for qualified and governmental plans.

Equitable maintains several pooled separate accounts, including PPF, in which pension, profit-sharing, and thrift plans participate. Equitable also offers several single customer separate accounts, and investment management services pursuant to which Equitable invests plan assets in various separate accounts. In particular, Equitable maintains PPF for the investment of corporate qualified and governmental pension plan assets in real estate and real estate related investments.

2. It is represented that PPF is an insurance company separate account, as defined in section 3(17) of the Act, which was established on August 20, 1973. As of December 31, 1995, PPF held 171 investments in wholly-owned properties or equities in real estate partnerships with an aggregate net value of $3.1 billion. In addition, as of December 31, 1995, PPF had eight investments in mortgage loans with an aggregate value of $311 million, or 9.2% of PPF's total net asset value. PPF's portfolio is diversified by property type and by geographic region.

3. As of December 31, 1995, approximately 206 plans were invested in PPF. No plan holds more than a 20 percent interest in PPF. In particular, the Equitable Retirement Plan for Employees, Managers and Agents (the Plan) is invested in PPF. The Plan is a defined benefit plan which as of December 31, 1995, had invested 4.36% of its assets in PPF. As of the same date, 2.2 percent of the fair market value of the assets of PPF were represented by the Plan's investment.

4. ERE provides investment advice to Equitable relating to origination, evaluation and monitoring of real estate investments for Equitable's pooled and single customer separate accounts that invest in real estate and real estate-related investments (the Accounts). ERE was an indirect wholly owned subsidiary of Equitable until it was sold on June 10, 1997, to Neptune Real Estate, Inc., a Delaware corporation which is wholly-owned by Lend Lease Corporation, an Australian Corporation. In connection with the sale, Equitable and ERE have entered into several separate advisory agreements setting forth the terms of ERE's provision of investment advisory services to Equitable with respect to the Accounts.

It is represented that, even though ERE is no longer an affiliate of Equitable, the exemptive relief proposed herein is still required because ERE will continue to be a fiduciary to Equitable with respect to PPF.

5. Among the assets owned by the PPF is One Boston Place, a 41 story office building with a total of 769,570 square feet of rentable space. On July 24, 1996, PPF entered into a lease for 8,962 square feet of office space (Leased Space) in One Boston Place to ERE. The lease provides for a non-renewable 5-year term at an annual fixed rent of $269,452, with ERE's tenancy beginning October 1, 1996, the date of estimated completion of the remodeling of the premises in accordance with ERE's plans and specifications. The cost of the remodeling was paid for by One Boston Place and it was factored into the rental rate.

6. Prior to entering into a lease agreement for the Leased Space, Equitable hired Lawrence A. Bianchi to act as Independent Fiduciary for PPF with regard to the transaction for which exemptive relief is proposed, herein. Mr. Bianchi is a principal in the Codman Company, Inc., a Boston-based real estate development company. It is represented that Mr. Bianchi has over 32 years experience in all aspect of real estate development, real estate management and valuation. It is further represented that he is experienced and familiar with the real estate market in downtown Boston and has particular experience in the area of commercial leasing, having leased in excess of 8 million square feet of office space. Mr. Bianchi states that he receives less than 1 percent of his total fees from income attributable to business dealings with Equitable and its affiliates.

7. It is represented that Mr. Bianchi was authorized to determine on behalf of PPF, whether it was in the best interest of PPF to enter into the One Boston Place Lease. Pursuant to this authority, Mr. Bianchi represented PPF in negotiations regarding the One Boston Place lease. In addition, he had sole authority to determine whether and on what terms, PPF would enter into the Lease with ERE.

8. Mr. Bianchi represents that he inspected the Leased Space on June 24, 1996. On July 18, 1996, Mr. Bianchi issued a preliminary report to PPF, regarding the Lease. This report, which contained conclusions regarding the appropriate rental rate and other lease terms, served as Mr. Bianchi's basis for the negotiation of the Lease. Mr. Bianchi's conclusions and recommendations were incorporated into the Lease as executed, on July 24, 1996. On July 31, 1996, he finalized the report and confirmed that the July 24, 1996 agreement covering the Leased Space was fair to PPF and the rental rate constituted fair market rent. In order to determine that the Lease was fair and the rent to be paid under the Lease was fair market rent, Mr. Bianchi reviewed recent rentals of similar office space located in comparable downtown Boston office buildings.

In addition to accepting responsibility for determining that the Lease is in the best interest of the PPF, Mr. Bianchi accepted the continuing duty to monitor compliance with the lease terms by ERE under its lease in One Boston Place. Mr. Bianchi represents that he will take any action necessary to assure that ERE's obligations as lessee are being fully performed.

9. Mr. Bianchi represents that the Lease is in the best interest of PPF because it is a fair market lease and no commissions were paid as a result of the transaction.

Equitable represents that the Leased Spaced now occupied by ERE was vacant for 8 months prior to ERE's occupancy and the Leased Space was actively marketed to unrelated parties during the 15 months prior to ERE's occupancy. While it was actively marketed, approximately 90 unrelated prospective tenants inspected the Leased Space. Equitable also represents, that because the Leased Space was only available for a five-year term, without the possibility of renewal, and because the Leased Space was encumbered by an expansion option in favor of an unrelated third party, prospective

tenants selected other spaces in One Boston Place.

10. In summary, the applicant represents that the transaction satisfies the 408(a) of the Act for the following reasons: (a) All the terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party; (b) The interests of PPF for all purposes under the Lease are represented by an independent fiduciary; (c) The independent fiduciary has determined that the rent paid by ERE under the Lease is no less than the fair market rent; and (d) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Knoxville Surgical Group Qualified Retirement Plan (the Plan) Located in Knoxville, Tennessee

[Exemption Application No: D–10506]

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and 406(b) and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale (the Sale) of a medical office condominium (the Property) by the Plan to Hugh C. Hyatt, M.D., Richard A. Brinner, M.D., Randal O. Graham, Michael D. Kropilak, M. D., and P. Kevin Zirkle, M.D. (the Purchasers), parties in interest with respect to the Plan provided the following conditions are satisfied: (1) the Sale will be a one time transaction for cash; (2) the Property will be sold at a price equal to the greater of $780,000 or the fair market value of the Property on the date of the Sale; and (3) the Plan will pay no commissions or expenses associated with the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 21 participants. The Plan sponsor is the Knoxville Surgical Group. As of October 17, 1997, the value of the Plan's assets was $6,747,255.72. The Trust Company of Knoxville is the Plan trustee. In 1996, the Plan sponsor merged with another medical practice by the name of Premier Surgical Group. Once the Sale is complete, the Plan will be merged into the Premier Surgical Plan. The Plan proposes to sell the Property to divest itself of real estate investments for a cash price of $780,000 with no commissions or expenses of the sale to be paid by the Plan. The Purchasers are shareholders of the Plan sponsor.

2. The Property is a medical office condominium located in Knoxville Tennessee . The Plan acquired the Property in 1994 pursuant to Prohibited Transaction Exemption (PTE) 94–53 (59 FR 35759, July 13, 1994). PTE 94–53 provided that the Plan exchange a certain parcel of improved real property valued at $425,000 for the Property and lease the Property to the Plan sponsor subject to certain conditions. The applicant represents that all terms and conditions of PTE 94–53 have been satisfied. The Property has been leased to the Plan sponsor since this time. The lease requires that the lessee pay all taxes, insurance and maintenance expenses. The applicant represents that the Plan's total holding costs related to the Property is $242,792.

3. On August 1, 1997, Charles Wesley of Wallace & Associates, a State Certified General Real Estate Appraiser, valued the property at $780,000 using the market value method. Market value is defined as ''the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably assuming that price is not affected by undue stimulus.''

4. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) the Sale will be a one time transaction for cash; (2) the Plan will pay no commissions or fees associated with the Sale; (3) the Plan will receive the greater of $780,000 or the fair market value of the Property at the time of the Sale; and (4) the Plan will receive a sales price amount greater than the acquisition and holding costs of the Property.

FOR FURTHER INFORMATION CONTACT: Allison Padams, U. S. Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

Overland, Ordal, Thorson & Fennell Pulmonary Consultants, P.C. Profit Sharing Plan & Trust (the Plan) Located in Medford, OR 97501

[Application No. D–10523]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain parcel of real property (the Property) by the individually directed account (the Account) in the Plan of Eric S. Overland, M.D. (Dr. Overland) to Dr. Overland, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;

(c) The Account receives the greater of the fair market value of the Property as of the date of sale or $105,000; and

(d) The Account is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Factual Representations

1. The Plan is a defined contribution 401(k) profit-sharing plan that provides its 13 participants with the opportunity to direct the investment of their individual accounts. The Plan is sponsored by Overland, Ordal, Thorson, & Fennell Pulmonary Consultants, P.C. The trustees of the Plan are Dr. Overland, Dr. John C. Ordal, Dr. Stuart H. Thorson, and Dr. Dan F. Fennell. As of the Plan year ending September 30, 1996, the Plan held assets valued at approximately $1,305,917. As of the same date, Dr. Overland's Account had assets valued at $491,126.

2. The Property consists of a five (5) acre parcel of undeveloped real estate located in the Gardner Subdivision at 1234 Gardner Way, Medford, Oregon. A well has been installed on the Property and there is an outbuilding located on the southeast corner of the Property.

3. According to the applicant, the Account acquired the Property on June 14, 1994, from an unrelated third party in a cash transaction for $95,770.77, including closing costs. Since purchasing the Property, the Account has incurred $15,069 of maintenance costs and real estate taxes.

4. The applicant represents that Dr. Overland does not own any land adjacent to the Property and that the Property has not been leased or used by any parties in interest or disqualified persons.

5. The applicant requests an exemption for the proposed sale of the Property by the Account to Dr. Overland. The applicant desires to sell the Property due to the illiquid nature of the asset, and because the investment has failed to appreciably increase in value. In this regard, Dr. Overland is concerned about continual Plan expenses concomitant with holding the Property such as property taxes, utility costs and fire maintenance. Finally, the applicant states that he is apprehensive regarding potential property liability issues, and possible changes in zoning regulations that could affect the future development and value of the Property.

6. The Property was appraised by two independent, qualified appraisers. Both appraisers utilized the market value approach, which involves an analysis of similar recently sold properties in the area surrounding the Property in question, so as to derive the most valid sales price of the Property. On April 1, 1997, Mr. Roy Wright, a Senior Residential Appraiser and member of the Appraisal Institute, determined a fee simple interest in the Property to be worth $120,000. On April 20, 1997, David W. Isom, also a Senior Residential Appraiser and member of the Appraisal Institute, determined a fee simple interest to be worth $90,000. Because of the significant disparity in the two appraisals, it has been decided that the average of the two, $105,000, should be used as a benchmark with respect to the value of the Property.

7. The applicant represents that the proposed transaction would be feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Account because if the Property were sold, the Account would be able to invest the proceeds from the Sale in other assets and achieve a higher rate of return. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the Account will receive not less than the fair market value of the Property as of the date of sale or $105,000, and will incur no commissions, costs, or other expenses as a result of the Sale.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the terms and conditions of the Sale would be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale would be a one-time cash transaction permitting the Account to invest in assets with a higher rate of return; (c) the Account would receive not less than the fair market value of the Property as of the date of sale or $105,000; and (d) the Account would not be required to pay any commissions, costs or other expenses in connection with the Sale.

NOTICE TO INTERESTED PERSONS: Because Dr. Overland is the only participant to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of February 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–3051 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10396]

Notice of Proposed Exemption for Certain Transactions Involving the Massachusetts Mutual Life Insurance Company (MM), Located in Springfield, MA

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by MM, including the MM general account and the general accounts of MM's affiliates which are licensed to do business in at least one state (collectively, the General Account), and the ERISA-Covered Accounts with respect to which MM is a fiduciary. As an acknowledged investment manager and fiduciary, MM is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

DATES: Written comments and requests for a public hearing must be received by the Department on or before April 7, 1998.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent of the Office of Exemption Determinations, Pension and

Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Application No. D–10396. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by MM pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Summary of Facts and Representations

1. MM is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts and subject to supervision and examination by the Insurance Commissioner of the Commonwealth of Massachusetts. MM operates in all 50 states, as well as the District of Columbia and Puerto Rico, and presently has approximately 3 million individual and group policyholders and $242 billion of life insurance in force. MM, either directly or through its affiliates, offers a complete portfolio of life insurance, health insurance, asset accumulation products, health and pension employee benefits, plan administration and investment management services.[1] It also provides health and pension benefits to its employees, including former employees of Connecticut Mutual Life Insurance Company (Connecticut Mutual).[2] The assets of MM as of December 31, 1996 are estimated to be $55.7 billion and its assets under management as of that date are approximately $130.8 billion.

MM maintains several pooled separate accounts in which pension, profit-sharing and thrift plans participate, and also manages all or a portion of the assets of a number of large plans pursuant to various single customer separate accounts and advisory accounts (the ERISA-Covered Accounts). A number of ERISA-Covered Accounts invest in equity interests in real estate or in mortgage loans. The ERISA-Covered Accounts, MM's general account (which includes all of MM's assets invested on behalf of its policyholders not participating in separate accounts), the general accounts of one or more of MM's affiliates which are insurance companies licensed to do business in at least one of the fifty states, accounts maintained by MM for foreign pension plans and other ''non-ERISA'' investors, and accounts which MM may establish in the future (collectively, the Accounts) may participate in the transactions which are the subject of this proposed exemption.

2. The applicant represents that in recent years real estate has gained increasing popularity among plan sponsors. Various high quality commercial real estate investments from time to time become available which offer the potential for a higher rate of return than do other real estate investments. Because there are relatively few potential investors for large scale investments such as office buildings, shopping centers, and industrial parks, the owner or developer of such real estate investments must offer a higher return in order to attract investors. In many cases, MM's real estate accounts would be precluded from acquiring these investments on an individual basis because such investments would require the commitment of a disproportionately large percentage of account assets to one or a few investments. The sharing of large or uniquely desirable real estate investments would permit the ERISA-Covered Accounts to participate in more attractive and profitable real estate investments while maintaining portfolio diversification.

3. The real estate investments which MM proposes to share may either take the form of a direct investment in real property or an interest in a joint venture partnership which holds title to, manages, and/or develops real property. MM's investments in joint venture partnerships may include an equity interest in the joint venture and a debt interest in mortgages to which the joint venture property is subject. Development joint venture arrangements could be ''leveraged''; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by loans to the partnership which are secured by the joint venture's interest in its real property. MM, on behalf of its Accounts, could own 50 percent of the joint venture partnership and provide 100 percent of the debt financing.

4. MM anticipates that real estate investments will be allocated to each Account maintained by MM in the same proportions of debt and equity. No ERISA-Covered Account will participate in an investment for the purpose of enabling another Account to make an investment.

5. General investment criteria for each ERISA-Covered Account are set forth in the separate account contract between MM and the plan contractholder. MM's allocation procedures provide for the allocation of each real estate investment opportunity to one or more Accounts for which the opportunity is suitable, taking into consideration each Account's investment criteria and strategy, as well as each Account's acquisition budget for the year. These procedures are periodically reviewed by MM to ensure that each Account receives equitable treatment.

6. During the course of MM's holding of a real estate investment, certain situations may arise which require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When MM shares these investments among more than one Account, a potential for conflict may arise since the same decision may not be in the best interest of each Account. Therefore, the applicant has submitted a request for exemption, with certain proposed safeguards designed to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts.

7. Each plan contractholder currently participating in an ERISA-Covered Account that proposes to share real estate investments which are structured as shared investments under this proposed exemption must be furnished with a written description of the transactions that may occur involving such investments which might raise questions under the conflict of interest prohibitions of the Act with respect to MM's involvement in such transactions and which are the subject of this proposed exemption. This description

[1] On March 31, 1996, MM sold its group life and health subsidiary, and will no longer offer group life and health insurance after the completion of a transition period under the purchase and sale agreement.

[2] On February 29, 1996, Connecticut Mutual, a mutual life insurance company organized under the laws of the State of Connecticut, was merged with and into MM. As a result of the merger, MM succeeded to all rights, benefits, obligations and liabilities of Connecticut Mutual. In addition, certain of the retirement plans of Connecticut Mutual and its affiliates were merged with and into the retirement plans of MM and its affiliates (collectively, the Affiliate Plans) as of January 1, 1997.

must discuss the reasons why such conflicts of interest may be present (*i.e.*, because the General Account participates in the investment and may benefit from the transaction or because the interests of the various Accounts participating in the investment may be adverse with respect to the transaction). The description must also disclose the principles and procedures to be used to resolve any anticipated impasses, as will be outlined below. In addition, each current contractholder in an ERISA-Covered Account that proposes to share investments must receive a copy of this notice of pendency within thirty days of its publication, and a copy of the exemption when granted before the Account begins to participate in the sharing of investments.

8. With respect to new contractholders in an ERISA-Covered Account that participates in the sharing of investments, each prospective contractholder must be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption as granted before the contractholder begins to participate in the Account. A plan contractholder may withdraw from a single customer or open-end pooled ERISA-Covered Account by providing written notice to MM. Where a plan contractholder is in a closed-end pooled ERISA-Covered Account, it may not have a right to have its interest redeemed prior to the predetermined termination date, but it may sell its interest to a third party.

9. An independent fiduciary or independent fiduciary committee must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning those transactions occurring subsequent to the allocations which are the subject of this proposed exemption. The independent fiduciary is informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to his or its acceptance of the appointments. MM and its affiliates shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction which is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. However, the independent fiduciary need only have the authority to make decisions regarding allocations among, or any other subject transaction involving an ERISA-Covered Account and any other Account that occur after the plan(s) invest(s) in the ERISA-Covered Account. In the case of transactions involving the possible transfer of an interest in a real estate investment between the General Account and an ERISA-Covered Account, the independent fiduciary will not be limited to approving or rejecting the recommendations of MM, but will have full authority to negotiate the terms of the transfer (in accordance with the independent appraisal procedure described below) on behalf of the ERISA-Covered Account. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

10. The independent fiduciary must be unrelated to MM or its affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of MM, or be affiliated in any way with MM or any of its affiliates. (See definition of ''affiliate'' in Section V(a), below.) The independent fiduciary must be either (1) A business organization which has (or whose principals have) at least five years of experience with respect to commercial real estate investments, (2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or (3) the plan sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (excluding retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will exclude compensation for services of an independent fiduciary who is initially selected by a plan sponsor for a single customer ERISA-Covered Account, because this situation would not give rise to the possibility of divided loyalty on the part of the independent fiduciary. The income limitation will include services rendered to the Accounts under any prohibited transaction exemptions granted by the Department. In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may (i) Acquire any property from, sell any property to, or borrow any funds from, MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and a period of six months after such organization or individual ceases to be an independent fiduciary, or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. The independent fiduciary of a pooled ERISA-Covered Account may be a committee of three to five investors or investor representatives approved by the plans participating in the pooled ERISA-Covered Account.[3] A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

11. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by MM. In that event, the independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. The applicant represents that because pooled ERISA-Covered Accounts often include several hundred plan contractholders, the independent fiduciary will be selected initially by MM. Prior to the commencement of the independent fiduciary's responsibilities on behalf of an Account, the selection of the independent fiduciary, however, must be approved by a majority of the

[3] The Department notes that where the independent fiduciary consists of such a committee, the committee members would each need to have the requisite minimum of five years' experience with respect to commercial real estate investments.

contractholders in such an Account by vote proportionate to their interests in the Account.

12. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee. This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. The information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from MM or an MM affiliate during the preceding year, including compensation for any business services performed by the fiduciary or any affiliate for MM or its affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve MM's initial selection of the fiduciary or fiduciary committee and whether to continue such approval each year thereafter.[4]

13. Once an independent fiduciary committee or organization is appointed, the members of the committee or the organization will continue to serve subject to an annual vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary or committee member may be removed by a majority vote of the Account's contractholders or, in the case of a committee member, ''for cause'' by a majority vote of the other members of the committee. The term ''for cause'' means that there must be sufficient and reasonable grounds for removal and the reasons for removal must be related to the ability and fitness of an individual to perform his or her required duties. MM will not have the authority to remove an independent fiduciary or a member of an independent fiduciary committee. If a vacancy occurs by virtue of the death, resignation or removal of a member of an independent fiduciary committee, replacement members of the committee will be appointed by a majority vote of remaining members of the committee. Possible replacements may be suggested by members of the committee, MM or plan contractholders. If an organization acting as independent fiduciary is removed by majority vote of the Account's contractholders, the procedure described above for the initial selection of an independent fiduciary will apply to the replacement.

14. The independent fiduciary will be compensated by the ERISA-Covered Account. MM may indemnify any independent fiduciary or members of an independent fiduciary committee with respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the Commonwealth of Massachusetts and subject to the requirement that such person acted in good faith and in a manner he or she reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the Account.

15. Written minutes must be taken and maintained in connection with all meetings involving independent fiduciary committees of ERISA-Covered Accounts. Such minutes must include a rationale as to why decisions were made. Where the independent fiduciary is a committee, decisions will be made on the basis of a majority vote. Any dissenting committee member will provide a written rationale for his dissent. Where the independent fiduciary is a single entity (e.g., a business organization) for which no minutes of meetings would be maintained, all decisions of such independent fiduciary and rationale thereof must be set forth in writing and maintained by MM pursuant to the recordkeeping requirements outlined in the General Conditions below.

16. In connection with the management of real estate shared investments, it is possible that MM, on behalf of the General or Non-ERISA Accounts, or the independent fiduciaries for ERISA-Covered Accounts participating in a shared investment, may develop different approaches as to whether or how long an investment should be held by an Account. Certain situations may also arise during the course of MM's holding of a shared real estate investment in which decisions will need to be made where it is not possible to obtain the agreement of MM and all of the independent fiduciaries involved. These situations may arise as a result of an action taken by a third party, or they may arise in connection with an action proposed by MM or the independent fiduciary for an ERISA-Covered Account. In such cases, MM will make recommendations to the independent fiduciaries regarding a proposed transaction. If a course of action cannot be found that is acceptable to each independent fiduciary, a stalemate procedure will be followed to ensure that a decision can be made. The applicant represents that the stalemate procedure is similar to procedures typically used to resolve disputes between co-venturers under real estate joint venture agreements and is therefore familiar to most real estate investors.

17. With respect to stalemates between two or more ERISA-Covered Accounts which share an investment, the stalemate procedure is designed to provide a result that is similar to what would occur in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action which will be taken in such cases is the one that does not require an Account: 1) to invest new money; 2) to change the terms of an existing agreement; or 3) to change the existing relationship between the Accounts.

18. However, one additional option will be provided in the event of such stalemates. Where investments are shared by two or more Accounts (other than the General Account), MM will make recommendations to the independent fiduciaries of each participating ERISA-Covered Account regarding investment management decisions that must be made for a real estate shared investment. For example, if the independent fiduciaries cannot agree on a MM recommendation, MM may offer alternate recommendations (possibly including partition and sale of undivided interests) in an attempt to facilitate agreement. If the independent fiduciaries still cannot agree, each ERISA-Covered Account will be offered the opportunity to buy out the other ERISA-Covered Account's interest on the basis of a specified price. The specified price may be based on the price offered by a third party, or, if no third party offer is received (or if the third party offer is unacceptable to either ERISA-Covered Account), the specified price will be the price established under the independent appraisal procedure described below. As in a buy-sell provision in a typical joint venture, the ERISA-Covered Account to which the offer is made will have the option to sell to the offering ERISA-Covered Account at the specified price, or to buy out the offering ERISA-Covered Account's interest at that price.

19. If the independent fiduciary for the ERISA-Covered Account which disagrees with MM's recommendation

[4] MM represents that the contractholders in its single customer and pooled closed-end real estate Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts.

does not wish to make a buy-sell offer to the other ERISA-Covered Account, the other Account(s) (except for the General Account) may do so. If no ERISA-Covered Account chooses to exercise the buy-sell option, MM will take the action designed to preserve the status quo, i.e., the action designed to avoid expenditure of additional funds by the Accounts and avoid any change in existing arrangements or contractual relationships.

20. Where a real estate investment is shared by the General Account and one or more ERISA-Covered Accounts and a stalemate occurs between the General Account and an ERISA-Covered Account, MM may offer alternate recommendations to facilitate an agreement. If the Accounts still cannot reach agreement, each Account will be offered the opportunity to buy out the other Account's interest on the basis of a specified price, which will be established in accordance with the independent appraisal procedure described below, or will be the price offered by a third party. If none of the Accounts elects to make a buy-sell offer to the other Account, MM would be required to take the action selected by the independent fiduciary of the ERISA-Covered Account. Where the General Account wishes, e.g., to hold its interest and the independent fiduciary for the ERISA-Covered Account determines to sell its interest, the General Account will buy out the interest of the ERISA-Covered Account at the price offered by the third party, or, at the ERISA-Covered Account's option, at an independently determined price. Conversely, where the independent fiduciary for the ERISA-Covered Account determines to retain its interest while the General Account wants to sell its interest, the ERISA-Covered Account has the option of buying out the General Account, or, if the independent fiduciary chooses not to, the status quo will be maintained.

Specific Transactions

I. Direct Real Estate Investments

(a) Transfers Between Accounts

21. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the ''selling'' Account to sell its interest in the shared investment to the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved in the transaction. The transfer may also be subject to the approval of the Insurance Departments of a number of states, including Massachusetts and/or New York. Because MM would be acting on behalf of both the ''buying'' and ''selling'' Accounts (but not the General Account) in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406(b)(2) of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Account of which MM is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer.

Ordinarily, no transfer of an interest in a shared investment will be permitted between the General Account and an ERISA-Covered Account. The transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account may be deemed to constitute a violation of sections 406(a)(1) (A) and (D) as well as sections 406(b) (1) and (2) of ERISA. As noted above, however, where a stalemate arises between the General Account and an ERISA-Covered Account, the transfer of such an interest would be permitted to resolve the conflict. Specific stalemate procedures have been developed for these situations. If, for example, a third party makes an offer to purchase the entire investment held by MM on behalf of the General Account and an ERISA-Covered Account, it is possible that the General Account would like to accept the offer and the independent fiduciary on behalf of the ERISA-Covered Account would like to reject the offer. In that event, MM may offer alternative recommendations to the independent fiduciary. If there is still no agreement, the independent fiduciary (as the party wishing to reject the offer) would be given the opportunity to buy-out the General Account's interest at a specified price. This price may be a proportionate share of the third party offer; or, if such price is unacceptable to the ERISA-Covered Account, a proportionate share of the price determined through the independent appraisal procedure described below. This procedure would give the ERISA-Covered Account an opportunity to retain its interest in the shared investment. If the ERISA-Covered Account does not choose to buy-out the General Account's interest, the General Account would be required to accede to the direction of the ERISA-Covered Account and would, therefore, reject the third party offer.

If, in the event of a third party purchase offer, the General Account wants to reject the offer but the independent fiduciary on behalf of the ERISA-Covered Account wants to accept the offer, the procedures described above would apply, except that the General Account (as the party wishing to reject the offer) would have the opportunity to buy-out the ERISA-Covered Account's interest at a proportionate share of the third party purchase offer, or, at the option of the independent fiduciary for the ERISA-Covered Account, at an independently determined price. This will permit the ERISA-Covered Account to sell its interest in a real estate investment, if it chooses to do so, at no less than the same price it would have received from a third party.

Even in the absence of a third party offer, MM may recommend the sale of a shared investment. If the independent fiduciary approves the recommendation, MM will arrange for the sale. If the independent fiduciary does not approve MM's recommendation, MM may offer alternative recommendations, possibly including partition and sale of divided interests. If, however, no agreement is reached, the independent fiduciary (as the party wishing to reject the recommendation) would be given the opportunity to buy-out the General Account's interest in accordance with the independent appraisal procedure described below. If there is no buy-out, MM would take the course of action consistent with the ERISA-Covered Account's determination and would, therefore, not sell the investment.

The independent fiduciary may also determine independently that a shared investment in an ERISA-Covered Account should be sold. If MM agrees with this recommendation, MM will arrange the sale. If MM, on behalf of the General Account, disagrees with the recommendation, MM will first attempt to sell the ERISA-Covered Account's interest to another Account other than the General Account. In this case, the sale price and other terms would have to be approved by the independent fiduciary for each ERISA-Covered Account. If the ERISA-Covered Account's interest cannot be sold to another Account, MM may offer

alternative recommendations, possibly including partition and sale of the ERISA-Covered Account's interest to a third party. If no agreement is reached with respect to these options, the General Account (as the party opposed to the sale) would have the opportunity of buying out the ERISA-Covered Account's interest at a price established under independent appraisal procedures described below. If there is no buy-out and no agreement, MM will be required to take the course of action consistent with the ERISA-Covered Account's determination and will sell the entire investment.

Where an independent price for the transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account is not established by an offer from an unrelated third party (or where the third party price is unacceptable to the ERISA-Covered Account), the stalemate procedure provides for the appointment of an independent appraiser. Under this procedure, MM and the independent fiduciary will each appoint an independent appraiser. These two appraisers will then choose a third appraiser. The panel of appraisers will each evaluate the entire investment, and the average of the three appraisals will be used to determine the proportional value of each shared investment interest. However, the General Account and the ERISA-Covered Account may agree that, if one valuation is more than a specified percentage outside the range of the other two valuations, that valuation may be disregarded and the transfer price will be the average of the remaining two valuations. The applicant represents that this procedure, which is of the variety typically used in real estate joint venture agreements, provides adequate protection for the ERISA-Covered Account because the independent fiduciary is an equal participant in the appraisal process. See Section I(a).

(b) Joint Sales of Property

22. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third party, and it may be determined for all of the participating Accounts that the sale is desirable. When the General Account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[5] Similarly, MM may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. In accordance with MM's stalemate procedures, if the independent fiduciary for one ERISA-Covered Account wishes to sell its interest in a shared investment and the independent fiduciary for another ERISA-Covered Account does not want to sell, MM will attempt to negotiate a compromise, including the transfer of interests from one Account to the other. If no agreement can be reached, the status quo will be maintained and no sale will be made. See Section I(b).

(c) Additional Capital Contributions

23. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow needed to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely by MM on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the shared investment;[6] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide its share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.[7] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirect sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts are involved or an ERISA-Covered Account and a non-ERISA-Covered Account are involved. Accordingly, the applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment (including the General Account). Any decision made or action taken by an ERISA-Covered Account (i.e., the contribution of either no additional capital, the Account's pro rata share of additional capital, less than or more than the Account's pro rata share, etc.) must be approved by such independent fiduciary. See Section I(c).

(d) Lending of Funds To Meet Additional Capital Requirements

24. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, the General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be

[5] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

[6] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account.

[7] In the case of shared real estate investments owned entirely by MM accounts, if an Account contributes capital equaling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the higher of the prime rate plus two percentage points or the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See Section I(d).

(e) Shared Debt Investments

25. MM occasionally makes real estate investments consisting of interim construction loans or medium or long-term loans on a property. In some instances, MM may have the opportunity to obtain an equity ownership interest in the underlying real property upon maturity of the debt or at the election of MM. It is possible that shared real estate debt investments might raise questions under section 406 of the Act in essentially two situations: (1) a material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the term of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided. These situations require a decision on behalf of the lender whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decision must be made on behalf of each Account with respect to the action to be taken when a loan modification or loan default situation occurs. These situations may also occur where two or more Accounts hold interests in debt investments in respect of the same property, and one interest is subordinate to the other in the event of insolvency. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since MM maintains each of these Accounts, the action it decides to take for the participating Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit MM on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account. If there is an agreement among the independent fiduciaries as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. See Section I(e).

II. Joint Venture Investments

26. Many real estate investments are structured as joint venture arrangements (rather than 100 percent ownership interest in property) in which MM and another party, such as a real estate developer or manager, participate as joint venturer partners (or co-venturers). Either MM or MM's co-venturer may act as managing partner of the joint venture. Joint venture investments typically involve several particular features by virtue of the terms and conditions of the joint venture agreements that may, when MM's joint venture interest is shared, result in possible violations of section 406 of the Act.

(a) Additional Capital Contributions to Joint Ventures

27. As in the case of investments made entirely by MM, joint venture real estate investments sometimes require additional operating capital. Typically, a joint venture agreement will provide for a capital call by the general partner of the joint venture to be made to each joint venturer and that each venturer provide the needed capital on a pro rata basis either in the form of an equity contribution or a loan to the joint venture. If one joint venturer refuses to contribute its pro rata equity share of the capital call, the other joint venturer(s) may contribute additional capital to cover the short-fall and thereby ''squeeze down'' the interest in the venture of the non-contributing joint venturer.[8] Alternatively, if sufficient additional capital is not provided by the joint venturers, other financing may be sought, or the joint venture may be liquidated. In the case of a capital call where MM's joint venture interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the joint venture. The general rule that MM will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. In addition to situations where some Accounts participating in the ownership of MM's joint venture interest may not be in a position to provide their share of a capital call, other situations may arise where the co-venturer is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act.

28. *MM Shortfall.* The General Account and an ERISA-Covered Account may experience a capital call from the general partner of the joint venture for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[9] the

[8] In the case of a call for additional capital involving a typical joint venture arrangement entered into between parties dealing at arm's length, the joint venture agreement may commonly provide that the equity interest of any non-contributing venturer be re-adjusted, or ''squeezed down'', on a capital interest basis. This involves re-adjusting the equity interests of the venturers solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This ''capital interest'' adjustment can substantially diminish the equity interest of the non-contributing venturer in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all venturers to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other venturers.

[9] In any case where the General Account and one or more ERISA-Covered Accounts share MM's interest in a joint venture, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account, up to its pro rata share of the additional capital call. Thus, the General Account will never be the cause

Continued

General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, Section II(a)(2) would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the greater of the prime rate plus two percentage points or the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In addition, the General Account may make an additional equity contribution to the joint venture to cover the ERISA-Covered Account's shortfall. In that event, the equity interest of the ERISA-Covered Account will be ''squeezed down'' (relative to the equity interest of the General Account) on a fair market value basis. This option would avoid the capital basis squeeze-down of the ERISA-Covered Account's interest by the co-venturer. Such contribution would be made by the General Account only after the independent fiduciary for the ERISA-Covered Account is given an opportunity to make an additional contribution. See Section II(a)(3).

A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered and a non-ERISA-Covered Account, participate in a joint venture investment. If one Account is unable or unwilling to provide its proportionate share of a capital call, the other Account may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Accounts. Thus, any of these disproportionate contribution situations between Accounts might result in a violation of section 406 of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides relief for these disproportionate contributions.

29. *Co-Venturer Shortfall.* In some cases, MM's co-venturer in a joint venture investment may be unable to meet its additional capital obligation, and MM may deem it advisable for some or all of the participating Accounts to contribute capital in excess of the pro rata share of MM's Accounts in the joint venture in order to finance the operation of the property (and thereby squeeze down the equity interest of the co-venturer).[10] The applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts (including the General Account) on a disproportionate basis if the need arises. Any instance involving the infusion of additional capital to a joint venture will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a co-venturer on the basis provided in the joint venture agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) Third Party Purchases of Joint Venture Properties

30. Under the terms of typical joint venture agreements, if an offer is received from a third party to purchase the assets of the joint venture, and one joint venture partner (irrespective of the percentage ownership interest of the joint venture partner) wishes to accept the offer, the other joint venture partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the venture. For example, if MM on behalf of the Accounts and a real estate developer are joint venture partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, MM on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the venture. When MM's interest in a real estate joint venture is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the developer, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The joint venture agreements typically require, however, that MM on behalf of the Accounts provide the co-venturer with a unified buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, MM might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able to buy out not only the co-venturer, but also the other participating Account(s) that wishes to accept the third party offer to sell. Or, one Account may itself be willing and able to buy-out the co-venturer while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. Such alternatives, when an ERISA-Covered Account is involved, while all possibly desirable from case to case, may also raise questions under section 406 of the Act, whether or not the General Account is a participant in the investment. Accordingly, the applicant is requesting exemptive relief that would permit MM to respond to third-party purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a co-venturer by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-venturer) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account in accordance with the stalemate procedure, as described below (see rep. 31, below).

31. In a case involving the sharing of a joint venture interest between two ERISA-Covered Accounts, if one ERISA-Covered Account wishes to buy out the co-venturer and the other ERISA-Covered Account is unable or unwilling to do so, the ERISA-Covered Account wishing to buy out the co-venturer

as between the Accounts of a capital contribution shortfall by MM that would result in a capital basis squeeze down by a co-venturer.

[10] In any case involving a shared joint venture interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital, the General Account would also contribute at least its pro rata share of such capital.

would have the opportunity to do so if the other ERISA-Covered Account's interests can also be accommodated. This could be accomplished if, for example (1) the second ERISA-Covered Account wishes to sell its interest to the first ERISA-Covered Account (at a proportionate share of the price offered by the third party offeror) and the first ERISA-Covered Account agrees; or (2) the second ERISA-Covered Account wishes to continue holding its original interest. If, however, the second ERISA-Covered Account wishes to sell its interest and the first ERISA-Covered Account is unwilling or unable to buy it, both Accounts would be required to sell to the third party offeror in order to avoid the expenditure of additional funds by an unwilling Account.

If the General Account participates in a joint venture interest subject to a third party purchase offer, the stalemate procedure would provide the same alternatives, except that if the General Account wishes to accept the third party purchase offer and the ERISA–Covered Account wishes to buy out the co-venturer (and is unwilling or unable to buy out the General Account's interest), the General Account would be required to buy out the co-venturer with the ERISA–Covered Account. See Section II(b).

(c) Rights of First Refusal in Joint Venture Agreements

32. Under the terms of typical joint venture agreements, if a joint venture partner wishes to sell its interest in the venture to a third party, the other joint venture partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if MM and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, MM would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate joint ventures, the decision by MM on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the joint venture agreement, only one option (exercise or not exercise) may be chosen by MM on behalf of the Accounts, exemptive relief is being requested that would permit MM to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA–Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA–Covered Account share a joint venture investment, even though MM may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other joint venturer's interest if the independent fiduciary determines that it is appropriate for the ERISA–Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Accounts other than the General Account participate in a joint venture and agreement cannot be reached on behalf of the Accounts on whether to exercise a right of first refusal, the right will not be exercised and the co-venturer will be permitted to sell its interest to the third party, unless one Account decides to buy-out the co-venturer alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-venturer without other participating Accounts taking part in the transaction. For example, in the case of a shared joint venture investment involving the General Account (or any other Account) and an ERISA–Covered Account, if the co-venturer wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA–Covered Account decides not to have the account participate in purchasing the co-venturer's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See Section II(c).

(d) Buy-Sell Provisions in Joint Venture Agreements

33. Joint venture agreements entered into by MM typically provide that one joint venture partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the joint venture agreement or buy out the interest of the first partner at such price. If the other joint venture partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These ''buy-sell'' provisions are generally used to resolve serious difficulties or impasses in the operation of a joint venture, but generally a joint venture agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by MM on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-venturer, may affect various participating Accounts differently. Accordingly, any decision made by MM in these cases involving ERISA–Covered Accounts might raise questions under section 406 of the Act. The applicant is requesting exemptive relief that would permit MM to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-venturer or to react to a buy-sell offer from a co-venturer. Any such decision must be approved by the independent fiduciary for each ERISA–Covered Account participating in the investment.

34. In the event that MM recommends the initiation of the buy-sell option against the co-venturer, MM will exercise the option if the independent fiduciary on behalf of each participating ERISA–Covered Account approves the recommendation. If, in the case of a General Account/ERISA–Covered Account shared joint venture investment, the independent fiduciary does not agree with MM's recommendation, the independent fiduciary would be given the opportunity to buy out the General Account's interest at a price to be determined in accordance with the independent appraisal procedure described above. If the independent fiduciary declines to buy out the General Account's interest, the General Account would then have the opportunity to buy out the ERISA–Covered Account's interest, (provided the independent fiduciary for the ERISA–Covered Account approves of such sale), also in accordance with the independent appraisal procedure. If neither the General Account nor the ERISA–Covered Accounts buys out the other's interest in the joint venture investment, MM would take the course of action most consistent with the determination of the ERISA–Covered Account, and would, therefore, not exercise the buy-sell option.

In the event that the co-venturer initiates the buy-sell option with respect to a shared joint venture investment, MM must either sell its entire interest to the co-venturer or reject the offer and buy-out the co-venturer's interest at that price. If the participating Accounts agree upon the course of action to be taken, MM will then take the agreed action. If no agreement is reached, various alternatives may be considered. For example, in the case of a General

Account/ERISA-Covered Account shared joint venture investment, if MM recommends rejection of the offer (and consequent purchase of the co-venturer's interest), but the independent fiduciary wants to accept the offer, the General Account would have the option to purchase the co-venturer's interest solely on behalf of the General Account. If the General Account chooses this option, the ERISA-Covered Account (which wished to accept the co-venturer's offer) would have the opportunity to sell its interest to the General Account, at a proportionate share of the price offered by the co-venturer, but would not be required to do so. However, if the General Account declines to purchase the ERISA-Covered Account's interest where the ERISA-Covered Account wishes to accept the buy-sell offer, the entire joint venture interest would be sold to the co-venturer. If the ERISA-Covered Account wishes to reject the buy-sell offer (and purchase the co-venturer's interest) and the General Account wishes to accept the offer, the General Account would be required to purchase its proportionate share of the co-venturer's interest, unless the independent fiduciary for the ERISA-Covered Account elects to purchase more than its proportionate share (including the entire co-venturer interest).

Where two or more ERISA-Covered Accounts share a joint venture investment, the stalemate procedure is similar, except that no ERISA-Covered Account would be required to purchase the interest of a co-venturer (and thus expend additional funds) against its wishes. See Section II(d).

(e) Transactions With Joint Venture Party in Interest

35. The applicant represents that when the General Account holds a 50 percent or more interest in a joint venture, the joint venture itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the joint venture and an ERISA-Covered Account that is also participating in the venture (*e.g.*, an additional contribution of capital) may be deemed to be a transaction between the plans participating in an ERISA-Covered Account and a party in interest (the joint venture itself) in violation of section 406. Accordingly, the applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account which is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture; or (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender. Either action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. See Section III.

Initial Proportionate Allocations

The applicant, MM, has not requested exemptive relief for the initial allocation of shared real estate investments by MM among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions as described in paragraph 3 above. It is the applicant's position that the initial sharing of a real estate investment pursuant to the described allocation by two or more Accounts maintained by MM (which may include both its General Account and one or more ERISA-Covered Accounts) does not involve a *per se* violation of sections 406(a)(1)(D) and 406(b)(1) and (b)(2) of the Act.

Regulations under section 408(b)(2) of the Act (29 CFR 2550.408b–2(e)) provide that the prohibitions of section 406(b) are imposed on fiduciaries to deter them from exercising the authority, control or responsibility which makes them fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the regulation states that the fiduciaries have interests in the transactions which may affect the exercise of their best judgment as fiduciaries. It is the Department's view, however, that a fiduciary does not violate section 406(b)(1) with respect to a transaction involving the assets of a plan if he does not have an interest in the transaction that may affect his best judgment as a fiduciary.

Similarly, a fiduciary does not engage in a violation of section 406(b)(2) in a transaction involving the plan if he represents or acts on behalf of a party whose interests are not adverse to those of the plan. Nonetheless, if a fiduciary causes a plan to enter into a transaction where, by the terms or nature of that transaction, a conflict of interest between the plan and the fiduciary exists or will arise in the future, that transaction would violate either section 406(b)(1) or (b)(2) of the Act. Moreover, if, during the course of a transaction which, at its inception, did not involve a violation of section 406(b)(1) or 406(b)(2), a divergence of interests develops between the plan and the fiduciary, the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).[11]

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts maintained by MM does not result in *per se* prohibited transactions under the Act, the Department has not proposed exemptive

[11] This analysis does not address any issues which may arise under section 406(b)(2) where investments are shared solely by two or more separate accounts maintained by a common fiduciary and the participation of one account is relied upon to support the initial investment of the other account.

relief with respect to the initial sharing of these investments.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans investing in ERISA-Covered Accounts which will be engaging in transactions described in the proposed exemption. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by MM, of the notice of proposed exemption as published in the **Federal Register** to the appropriate fiduciaries of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by MM

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in this notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any

decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by MM

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate [as defined in section V(e)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and ''selling'' Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the

independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to MM and its affiliates. This condition shall not apply to plans covering employees of MM.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments that are structured as shared investments under this exemption is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption if granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee composed of three to five individuals (who may be investors or investor representatives approved by the plans participating in the ERISA-Covered Account, and) who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of MM or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, MM, its affiliates, or any Account maintained by MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates for each of the transactions in this proposed exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. MM and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) MM maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MM or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption or any duly authorized

employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of MM, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An ''affiliate'' of MM includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MM,

(2) Any officer, director or employee of MM or person described in section V(a)(1), and

(3) Any partnership in which MM is a partner.

(b) An ''Account'' means the General Account (including the general accounts of MM affiliates which are managed by MM), any separate account managed by MM, or any investment advisory account, trust, limited partnership or other investment account or fund managed by MM.

(c) The ''General Account'' means the general asset account of MM and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An ''ERISA-Covered Account'' means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) ''Disproportionate'' means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, D.C., this 2nd day of February, 1998.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–3050 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Grant Application Availability Notice for FY 98

AGENCY: Institute of Museum and Library Services.

ACTION: Grant application availability notice for fiscal year 1998.

SUMMARY: This grant application announcement applies to the following Office of Museum Service programs: General Operating Support (GOS), Conservation Project Support (CP), Conservation Assessment Program (CAP), Museum Assessment Program (MAP I), Museum Assessment Program (MAP II), Museum Assessment Program III (MAP III), Museum Leadership Initiative (MLI) and Professional Services Program (PSP). This announcement also applies to the following Office of Library Services program: National Leadership Grants. All IMLS awards are under 45 CFR part 1180 for Fiscal Year 1998.

ADDRESSES: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 http://www.imls.fed.us/.

FOR FURTHER INFORMATION CONTACT: For information on museum programs call (202) 606–8540. For information on library programs call (202) 606–5227. For the Director's office call (202) 606–8537. Or contact the agency's website at http://www.imls.fed.us/.

SUPPLEMENTARY INFORMATION: The purpose of for museum awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions. The purpose for National Leadership Grants is to improve library services and collaboration between libraries and museums.

Eligibility

Museums meeting the definitions in 45 CFR 1180.3 may apply for these programs. The definition of ''museum'' includes (but is not limited to) the following institutions if they satisfy the other provisions of this section: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art; history (including historic buildings); natural history; science and technology; and planetariums. To be eligible for support from IMLS a museum must:

Be organized as a public or private nonprofit institution and exit on a permanent basis for essentially educational or aesthetic purposes; and

Exhibit tangible objects through facilities it owns or operates; and

Have at least one professional staff member or the full-time equivalent whose primary responsibility is the care, or exhibition to the public of objects owned or used by the museum; and

Be open and have provided museum services to the general public on a regular basis for at least two full years* prior to the date of application to IMLS; and

Be located in one of the fifty States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

For National Leadership Grants

All types of libraries may apply including public, school, academic, research (which makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public and is not on integral part of an institution of higher learning), special, private (not-for-profit), archives, library agencies, and library consortia. Libraries may apply individually or in partnership.

All disciplines of museums may apply, including art, children and youth, history, natural history, anthropology, nature center, science/technology centers, zoos, aquariums, arboretums, botanical gardens, historic houses and sites, planetariums, general, specialized, museum agencies, and museum consortia. Museums may only apply in a partnership that includes at least one library partner.

Institutions of higher education including public and not-for profit universities and colleges. Graduate library and information science schools may apply as part of an institution of higher education. Institutions of higher education may apply individually or in a partnership.

IMLS recognizes the potential for valuable contributions to the overall goals of the National Leadership Grants program by other public, not-for-profit

* Applicants to the Museum Assessment Program and the Conservation Assessment Program need not be open for two years.

and for profit organizations and encourages their participation in a partner application. They, however, may not be the official applicant.

Program Categories

General Operating Support (GOS)

IMLS makes awards under the GOS program to museums to maintain, increase, or improve museum services through support for basic general operating expenses.

Conservation Project Support Program (CP)

Awards are made through the CP program to assist with the conservation of museum collections, both living and non-living.

Conservation Assessment Program (CAP)

Awards are made through CAP to provide an overall assessment of the condition of a museum's environment and collections to identify conservation needs and priorities. CAP is a non-competitive, one-time funding opportunity, offered on a first-come, first-served basis. It is administered in cooperation with the National Institute for Conservation. See 45 CFR 1180, subpart D.

Museum Assessment Program (MAP)

The MAP I funds an overall assessment of a museum's operations. The MAP II funds an assessment of the museum's collection-related policies. The MAP III provides an assessment of the public dimension of museum operations. All of the Museum Assessment Programs are non-competitive, one-time funding opportunities, offered on a first-come, first-served basis. The Museum Assessment Programs are administered in cooperation with the American Association of Museums through a memorandum of understanding. See 45 CFR part 1180, subpart D.

Professional Services Program (PSP)

This program provides matching funds to professional museum associations for projects that serve the museum community.

Museum Leadership Initiatives (MLI)

Museum Leadership Initiative address national issues for museums. Program priorities may change annually.

National Leadership Grants (NLG)

This program was created to enhance the quality of library services nationwide and to provide coordination between libraries and museums. Awards will be made for (1) education and training for library and information science, (2) research and demonstration projects in library and information science, (3) preservation and digitization of library materials, (4) model programs of collaboration between libraries and museums.

Deadline Date for Transmittal of Applications

Applications must be mailed or hand-delivered by the deadline date:

Program	Deadline
GOS	Jan. 23, 1998.
CP	Mar. 6, 1998.
PSP	Apr. 10, 1998.
CAP	Dec. 5, 1997.
MAP I	Apr. 24, 1998.
MAP II	Mar. 13, 1998.
MAP III	Feb. 27, 1998.
MLI	June 19, 1998.
NLG	Apr. 17, 1998.

For GOS, CP, MLI, NLG and PSP Applications that are sent by mail must be addressed to the Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMLS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-canceled by the U.S. Postal Service.

Applications that are *hand-delivered* must be taken to the Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. Hand-delivered applications will be accepted between 9 a.m. and 4:30 p.m. (Washington D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

For MAP I, MAP II, and MAP III Applicants must apply to IMLS through the American Association of Museums (AAM). IMLS supplies the AAM with application forms and instructions. These are forwarded by AAM to applicant museums. The Director of IMLS approves applications meeting the MAP I, MAP II, and MAP III requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. If a museum's MAP I, MAP II or MAP III application is received on or before the indicated dates, it will be processed together with other MAP I, MAP II, or MAP III applications received during that period. Applications received after the indicated dates will be processed during the subsequent MAP I, MAP II or MAP III periods. In no event will MAP applications received after April 24, 1998, MAP II applications received after March 13, 1998, or MAP III applications received after February 27, 1998 be processed for Fiscal Year 1998 awards. Applicants should contact the American Association of Museums, 1575 Eye Street, NW, Washington, DC 20005, for application packets.

For CAP Applicants must apply to IMLS through the Heritage Preservation NIC. IMLS supplies the NIC with application forms and instructions. These are forwarded by Heritage Preservation NIC to applicant museums. The Director of IMLS approves applications meeting the CAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. Applicants must be received by December 5, 1997. Applications for FY 1998 awards which cannot be funded will not be carried over to the next fiscal year. All unfunded applicants who wish to receive an award in the subsequent year, must reapply. Interested parties should contact the Heritage Preservation NIC, 3299 K Street, NW, Suite 403, Washington, DC 20007 for applications.

Program Information

GOS program regulations are contained in 45 CFR ch. XI, § 1180.7 (1988) and related provisions.

CP program regulations are contained in 45 CFR 1180.20 (1988) and related provisions.

CAP and MAP program regulations are contained in 45 CFR part 1180, subpart D (1988).

PSP program regulations are contained in 45 CFR part 1180, subpart E (1988).

Further program information may be found in the Application forms and accompanying instructions in the application. See paragraph on Application Forms.

Available Funds

GOS

For FY 1998, $16,060,000 is available for this program. The GOS program award is equal to 15% of the museum's operating budget to a maximum of $112,500 to be spent over a two year period. The grant amount is determined annually by the National Museum Services Board. A museum that receives an award in one fiscal year may not apply for the following year's competition. (See 45 CFR 1190.16(b)).

CP

For FY 1998, $2,310,000 is available for this program. Normally, IMLS makes matching conservation grants of no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a Conservation Project Support grant which obligates in excess of $25,000 in Federal funds to a maximum of $75,000. The Director may make such a determination with respect to a category of Conservation grants by notice published in the **Federal Register**. IMLS awards Conservation Project Support grants only on a matching basis. At least 50% of the costs of a project must be met with non-federal funds. (See 45 CFR 1180.20 (f)).

CAP

For FY 1998, $820,000 is available for this program.

MAP, MAP II, MAP III

For FY 1998, $450,000 is available for this program.

PSP

For FY 1998, $600,000 was available is this program. This program provides matching funds for cooperative agreements that generally do not exceed $50,000.

MLI

For FY 1998, $600,000 is available.

NLG

For FY 1998, $1,371,937 is available for collaborative projects between museums and libraries, of which $1,000,000 is contributed by they IMLS Office of Museum Services and the remainder by the IMLS Office of Library Services. The library appropriation also provides $4,115,813 for the other three categories of National Leadership Grants.

Funding Priorities for Conservation Project Support Program

The National Museum Services Board, by notice published in the **Federal Register**, may establish funding priorities among the types of projects. IMLS Conservation Project Support guidelines identify four broad categories of museum collections: non-living; systematics/natural history collections; living collections/animals; and living collections/plants.

For each of the categories, with the exception of living collections/animals, the funding priority is a general conservation survey of collections and environmental conditions including development of institutional-range conservation plans. For living collections/animals the funding priority is research for improved conservation techniques.

Application Forms

IMLS mails application forms and program information in General Operating Support, Conservation Project Support, Museum Leadership Initiatives, National Leadership Grants and Professional Services Program application packets to museums and other institutions on its mailing list. Applicants may obtain application packets by writing or telephoning the Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. For National Leadership Grants call (202) 606–5227. For all other programs call (202) 606–8540. Application forms are available on the agency's website http://www.imls.fed.us/

To receive an application for the Conservation Assessment Program contact the Heritage Preservation NIC, 3299 K Street, NW, Suite 403, Washington, DC 20007 (202) 625–1495.

To receive an application for the Museum Assessment Programs contact the American Association of Museums, 1575 Eye Street, NW, Washington, DC 20005 (202) 289–1818.

(Catalog of Federal Domestic Assistance No. 45.301 Institute of Museum and Library Services)

(Museum and Library Services Act of 1996, Pub. L. 104–208 as amended)

Dated: January 21, 1998.

Mamie Bittner,

Director, Legislative and Public Affairs.

[FR Doc. 98–2966 Filed 2–5–98; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee (1176); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee (1176).

Date and Time: Tuesday, February 24, 1998; 8:30 a.m. to 2 p.m. in Room 1060.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

- Presentation of Interim Report of the Long Range Plan Working Group.
- Discussion of the essential components of the recommendations to the agencies.
- Discussion of progress and plans for completion of the Long Range Plan.
- Discussion of the transmittal of the Subcommittee Report on RHIC Experimental Equipment.
- Public Comment.(*)

(*) Persons wishing to speak should make arrangement through the Contact Person identified above.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2943 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: February 26–27, 1998: 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. William Sibley or Dr. Jesse Lewis, Program Directors, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Centers of Research Excellence in Science and Technology (CREST) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2944 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: February 23–25, 1998; 8:30 a.m. until 5 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bruce Palka, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Real Harmonics Analysis Program nominations/applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2942 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (#1160).

Date and Time: February 9–10, 1998, 8:30 a.m.–5 p.m.

Place: NSF, Room 390, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part—Open.

Contact Persons: Dr. John A. Phillips and Dr. Eric T. Nilsen, Program Directors, Ecological & Evolutionary Physiology, Dr. Penny Kukuk, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: February 10, 1998; 2:30 p.m. to 3:30 p.m.—discussion on research trends, opportunities and assessment procedures in Ecological & Evolutionary Physiology and Animal Behavior, with Dr. Mary E. Clutter, Assistant Director, Directorate for Biological Sciences.

Closed Session: February 9, 1998, 8:30 a.m.–6 p.m. and February 10, 1998, 8:30 a.m. to 2:30 p.m. and 3:30 to 5 p.m. To review and evaluate Ecological & Evolutionary Physiology & Animal Behavior proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: This notice was late due to the delayed scheduling of the open session. Confirmation of the open session was made last week.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2941 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–317]

Baltimore Gas and Electric Co.; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Baltimore Gas and Electric Company, (licensee) for an amendment to Facility Operating License No. DRP–53 issued to the licensee for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1, located in Calvert County, Maryland. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on June 18, 1997 (62 FR 33118).

The purpose of the licensee's amendment request involved replacing the service water heat exchangers with new plate and frame heat exchangers (PHES) having increased performance capability. The licensee also requested to operate the plant with one PHE secured, and removing one containment air cooler from service to enable the affected subsystem to remain operable while the one PHE is secured.

The NRC staff has concluded that the portion of the licensee's amendment request pertaining to operating the plant with one PHE secured, and removing one containment air cooler from service to enable the affected subsystems to remain operable while the PHE is serviced cannot be granted, and therefore, denied.

By March 9, 1998, the licensee may demand a hearing with respect to the partial denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 16, 1997, as

supplemented by letter dated November 14, 1997, and (2) the Commission's letter to the licensee dated February 2, 1998.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 2nd day of February 1998.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2996 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

In the Matter of Toledo Edison Company; Centerior Service Company; the Cleveland Electric Illuminating Company; (Davis-Besse Nuclear Power Station, Unit 1), Exemption

I

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees) are the holders of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit 1 (the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized-water reactor located at the licensees' site in Ottawa County, Ohio.

II

By letter dated November 18, 1997, as supplemented by facsimile dated December 9, 1997, the licensees requested an exemption from certain requirements in Title 10 of the Code of Federal Regulations, part 50, Appendix R, Section III.O, for Davis-Besse.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule....''

10 CFR part 50, Appendix R, Section III.O, requires that the reactor coolant pump (RCP) shall be equipped with an oil collection system if the containment is not inerted during normal operation. The oil collection system shall be so designed, engineered and installed that failure will not lead to fire during normal or design basis accident conditions and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. The underlying purpose of 10 CFR part 50, Appendix R, Section III.O, is to ensure that leaking oil will not lead to a fire that could damage safe shutdown systems during normal or design basis accident conditions.

On the basis of the enclosed Safety Evaluation, the NRC staff concluded that the design of the oil filling system and the level of protection provided by the licensees through the use of certain compensatory measures during oil fill operations provides reasonable assurance that a lube oil fire will not occur. The compensatory measures, as itemized in the licensees' November 18, 1997, exemption request, are:

(1) The licensees will take the following compensatory actions each time oil is added:

(a) Oil will be added only when a low oil level computer alarm is received on an RCP motor.

(b) Only a predetermined amount of oil necessary to clear the alarm (approximately three pints based on experience) will be initially added to the reservoir through the remote fill line. A maximum total volume of four pints may be added in an attempt to clear the alarm.

(c) The oil fill pot will be verified empty before the technician leaves the immediate area. Any spillage resulting from adding oil to the remote oil fill pot will be cleaned up.

(d) Personnel responsible for adding the oil will be instructed to report (to the control room) any evidence of smoke during the oil addition process. If smoke is seen, the fire brigade will be immediately dispatched to the area.

(2) In addition, a visual inspection will be conducted following refueling outages to confirm the integrity of the remote fill line system.

The staff also concluded that a worst-case postulated fire, from not having a lube oil collection system for the RCP lube oil fill lines, would be of limited magnitude and extent. In addition, the staff concluded that such a fire would not cause significant damage in the containment building and would not prevent operators from achieving and maintaining safe shutdown conditions. Accordingly, in light of the foregoing, the staff concluded that application of this collection system requirement is not necessary to achieve the underlying purpose of the rule.

IV

Contingent upon the use of the compensatory measures that are itemized in the licensees' November 18, 1997, exemption request, the NRC staff has concluded that the licensees' proposed use of the remote oil addition system without a collection system is authorized by law, will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has also determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR part 50, Appendix R, Section III.O, is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission hereby grants an exemption from the requirements of 10 CFR part 50, Appendix R, Section III.O, to the extent that the RCP lube oil fill lines are required to be protected with a collection system. The granting of this exemption is conditioned upon the licensees' use of the compensatory measures set forth in the licensees' November 18, 1997 exemption request.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (63 FR 4678).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of January 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2995 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for resumé.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking qualified candidates to fill prospective vacancies on its Advisory Committee on Reactor Safeguards (ACRS).

ADDRESSES: Submit resume to: Ms. Jude Himmelberg, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR APPLICATION MATERIALS, CALL: 1–800–952–9678. Please refer to Announcement Number 98–00001.

SUPPLEMENTARY INFORMATION: Congress established the ACRS to provide the NRC with independent expert advice on matters related to regulatory policy and the safety of existing and proposed nuclear power plants. The Committee work currently emphasizes safety issues associated with the operation of 106 commercial nuclear power plants in the United States; the pursuit of a risk-informed, and ultimately, as appropriate, performance-based regulatory approach; digital instrumentation and control systems; and technical and policy issues related to standard plant designs.

The ACRS membership includes individuals from national laboratories, academia, and industry who possess specific technical expertise along with a broad perspective in addressing safety concerns. Committee members are selected from a variety of engineering and scientific disciplines, such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, and instrumentation and process control systems. At this time, candidates are specifically being sought who have 15–20 years of specific experience, including graduate level education, in the areas of nuclear power plant operations and probabilistic risk assessment.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Because conflict-of-interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be weighed. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities issued by nuclear industry entities, or discontinuance of industry-funded research contracts or grants.

Copies of a resume describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address and telephone number should be provided. All qualified candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 50–100 days per year to Committee business. Applications will be accepted until March 13, 1998.

Dated: February 2, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–2992 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Safety-Conscious Work Environment; Withdrawal of Proposal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) has considered several strategies in addressing the need for its licensees to establish and maintain a safety-conscious work environment. The NRC described these strategies and requested public comment in a document published on February 26, 1997 (62 FR 8785). The Commission evaluated the public comments submitted in response to its request and is withdrawing the proposal outlined in the February 26, 1997, document.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION: The NRC published in the **Federal Register**, (62 FR 8785; February 26, 1997), a request for public comment on the implementation of a standardized approach to ensuring that licensees establish and maintain a safety-conscious work environment [1] with clearly defined attributes; the establishment of certain potential indicators that may be monitored and, when considered collectively, may provide evidence of an emerging adverse trend; and the establishment of certain remedial actions that the Commission may require when it determines that a particular licensee has failed to establish and maintain a safety-conscious work environment. In its discussion of the feasibility of using a standardized approach to this issue, the NRC described the attributes of a safety-conscious work environment; criteria to be considered as possible indicators that a licensee's safety-conscious work environment may be deteriorating; and standard options for dealing with situations where these criteria are not met. The NRC included draft language that could be used in a future rulemaking, new policy statement, or amendment to the NRC's Enforcement Policy.

The Notice requested public comments on various strategies for establishing and maintaining a safety-conscious work environment including where warranted the use of a holding period.[2] The NRC also sought comments on an alternate strategy in which all licensees would be required to institute

[1] The Commission's May 1996 Policy Statement on the ''Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation'' (61 FR 24336; May 14, 1996), defined a ''safety-conscious work environment'' as a work environment in which employees are encouraged to raise safety concerns and where concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to the originator of the concerns and to other employees.

[2] In general, a holding period as described in the February 26, 1997, document would provide that, when an employee asserts that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. The holding period would continue for an additional two weeks to permit the employee to file a complaint under Section 211 of the Energy Reorganization Act of 1974, as amended (ERA), with the Department of Labor (DOL), and, should the employee file, the holding period would continue until the DOL has made a finding based upon its investigation.

a holding period policy and periodic site surveys, rather than only those licensees who performed poorly in this area. The NRC received a total of 31 comments in response to its request.

Generally stated, the Nuclear Energy Institute (NEI),[3] as well as the Union of Concerned Scientists (UCS), while supporting the importance of establishing and maintaining a safety-conscious work environment at nuclear facilities, opposed proceeding with establishing a standardized approach for licensees who had failed to establish and maintain a safety-conscious work environment. Almost all commenters agreed that existing requirements and regulatory options available to the Commission are sufficient to meet expectations in this area and that new requirements and policies were not needed.

Briefly summarized, the NEI comments noted that: (1) the NRC's current processes effectively focus licensee attention on the need to maintain a safety-conscious work environment; (2) the standardized approach proposal is an ''unjustified radical departure from existing policy and may result in adverse safety consequences''; (3) the proposed indicators would result in a subjective evaluation by the NRC; and (4) the standard options, especially mandating a holding period, constitute inappropriate regulatory action and are likely to be found legally insupportable. Among other things, NEI maintained that mandating such a holding period is an action outside the jurisdiction of the NRC and is an inappropriate regulatory action based upon its direct intrusion on management's ability to address its own workforce issues. NEI urged the Commission to let stand the May 1996 Policy Statement as an affirmation of its focus on a safety-conscious work environment without implementing the strategies outlined in the February 26 request for comment.

The Department of Nuclear Safety, State of Illinois, did not support a formal rule. In its view, less formal guidance or a policy directive seemed more appropriate.

UCS, in comments dated April 25, 1997, also opposed the NRC's proposed standardized approach for a safety-conscious work environment. UCS stated that it believes that the May 1996 Policy Statement, as well as rigorous and consistent enforcement of existing regulations, is sufficient to achieve the NRC's objectives.

One commenter (International Brotherhood of Electrical Workers, Local 97) supported the NRC's proposal as presented in the February 26, 1997, document, stating that it did not believe that the current regulations were adequate. In addition, one commenter (Cheney & Associates) indicated that, while the mechanisms prescribed might work to some extent, they were not fundamentally different from past strategies which failed because neither the government nor the responsible corporation respected the strategy. Cheney proposed its own solution to the problem, which was to reinforce the strategy by such methods as certifying the competence of all workers in nuclear environments to identify safety problems in areas under their responsibilities; imposing sanctions for failure to identify a safety problem; and imposing criminal sanctions for failure to report an identified problem.

After considering all the submitted comments and further evaluating the proposal to standardize the NRC approach to a safety-conscious work environment, the Commission agrees with the commenters that the standardized approach set forth in the request for comment is not warranted. There needs to be flexibility in considering appropriate regulatory action to address each situation on a case by case basis. These appropriate actions include options such as Orders, Civil Penalties, Demands for Information, additional inspections and investigations, Chilling Effect Letters, and Management Meetings.

The Commission also agrees that sufficient requirements and policies are in place. The May 1996 Policy Statement clearly provides the Commission's expectations on achieving safety-conscious work environments. This Policy Statement and its basis in NUREG–1499, ''Reassessment of the NRC's Program for Protecting Allegers Against Retaliation,'' provides insights and guidance on steps that can be taken by licensees. The Commission's regulations prohibiting discrimination, *e.g.*, 10 CFR 50.7, provide the basis for enforcement action where discrimination occurs. When a licensee fails to achieve a safety-conscious environment, there may be violations of other NRC requirements such as 10 CFR Part 50, Appendix B, Criterion XVI. The Commission also has the necessary authority to issue orders to licensees and orders against individuals involved in discrimination to address regulatory issues associated with safety-conscious work environments. Therefore, a rulemaking, initiation of an additional policy statement, or an amendment of the NRC's Enforcement Policy to address the safety-conscious work environment is unwarranted at this time.

However, the Commission concludes that NRC should consider the emergence of adverse trends in licensees' abilities to maintain a safety-conscious work environment. Appropriate early intervention may result in a significant contribution to safety as a reluctance on the part of nuclear employees to raise safety concerns is detrimental to nuclear safety. Giving consideration to potential indicators of a deteriorating work environment may alert the NRC of emerging problems in a licensee's safety-conscious work environment that warrants NRC involvement to encourage licensee management to address the environment for raising concerns. The Commission recognizes that there are no singular indicators to judge that a safety-conscious work environment is deteriorating at a licensed facility.[4] Evaluating the safety consciousness of a licensee's work environment will require careful judgments. The effort to identify emerging trends at a licensed facility, while difficult, would be less than the regulatory effort required in responding to a licensed facility where the safety-conscious work environment has already deteriorated.[5]

As to the holding period concept, in light of the potential legal issues, the potential for abuse by employees, as well as the comments received on the establishment of a formal holding period as an option to address a deteriorated safety-conscious work environment, the Commission believes that the holding period option should not be required by the NRC. Nevertheless, a holding period is clearly an option that licensees should consider

[3] The majority of the commenters supported the Nuclear Energy Institute's (NEI) comments.

[4] Many of the commenters appear to have interpreted the contemplated use of ''indicators'' to mean fixed indicators demonstrating a deteriorating safety-conscious work environment. This was not NRC's intent. It was recognized that any one piece of data can be ambiguously interpreted, and focusing on individual data to the exclusion of other information can be misleading. The request for comment explained that these indicators in isolation may not be indicative of an actual overall deterioration of a safety-conscious work environment, particularly if not accompanied by overall problems in operational or safety performance. While each of the indicators described in the request for comment may individually be ambiguous, an evaluation of the totality of indications may indicate a deteriorating safety-conscious work environment.

[5] As stated in the request for comment, when the perception of retaliation for raising safety concerns is widespread, a licensee may find it exceedingly difficult to obtain cooperation from their employees in identifying and eliminating problems adversely affecting the safety-conscious work environment; to reverse this perception of this retaliation; and to regain the trust and confidence of their workforce.

to reduce chilling effects arising out of issues of discrimination pending investigations. Thus, the Commission continues to support the voluntary use of a holding period as described in the May 1996 Policy Statement.

Consistent with this discussion, the February 26, 1997, document is being withdrawn.

Dated at Rockville, Maryland, this 30th day of January 1998.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Acting Secretary of the Commission.

[FR Doc. 98–2993 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Event Reporting Guidelines; Availability of Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The NRC is announcing the availability of a report, NUREG–1022, Revision 1, ''Event Reporting Guidelines, 10 CFR 50.72 and 50.73.''

ADDRESSES: NUREG-series documents are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. NUREG-series documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328.

FOR FURTHER INFORMATION CONTACT: Dennis Allison, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–6835, e-mail dpa@NRC.gov

SUPPLEMENTARY INFORMATION: The purpose of this report is to help ensure that events are reported as required by improving the guidelines for implementing 10 CFR 50.72, ''Immediate notification requirements for operating nuclear power reactors,'' and 10 CFR 50.73, ''Licensee event report system,'' including consolidation of the guidelines into a single reference document. NUREG–1022, Revision 1 supersedes NUREG–1022 and its Supplements 1 and 2.

Previous Draft and Comment

The availability of the second draft report for public comment was announced on February 7, 1994 (59 FR 5614). The comment period expired April 5, 1994. Eighteen comment letters were received, representing comments from fourteen nuclear power plant licensees (utilities), three organizations of utilities, and one individual. A list is provided below. All the comment letters provided specific recommendations for changes to the report. Seven letters indicated general support, at least to the extent of indicating that a document which satisfies the mutual goals of the NRC and its licensees was within reach. Two letters appeared to indicate general disapproval. The resolution of comments is summarized below. This summary addresses the principal comments (i.e., those that are not minor, editorial, or supportive in nature).

Comment: Two comment letters appeared to express general disapproval. One commentor indicated that, although there were some significant improvements over the existing reporting guidance, significant issues remained in the report that would very likely result in an increase in reporting burden with little or no gain in safety. Four specific examples were cited: (1) The voluntary reporting guidance in the Foreword, Sections 2.5 and 3.3.2, (2) an example of relief valve testing in Section 2.7, (3) the need to report as ''outside the design basis'' when a system is found to lack suitable redundancy as discussed in Section 3.2.4, and (4) an example of inadvertent opening of a high pressure to low pressure isolation valve in Section 3.2.4. Another commentor indicated that the guidance would expand the reporting requirements of 10 CFR 50.73 without appropriate rulemaking or backfit analysis. The comment emphasized two particular items: (1) The need to report non-redundant emergency assessment equipment out of service after 8 hours as discussed in Section 3.2.7 and (2) the guidance and rationale related to voluntary reporting in Section 5.1.5.

Response: The NRC staff has considered the guidance and the comments and modified the guidance where appropriate. After these modifications the NRC staff concludes that the guidance properly interprets the requirements of the current rules and is, therefore, appropriate.

With regard to burden, the staff has reviewed the guidance which is new or different in a meaningful way from previously published generic guidance (i.e., NUREG–1022 and its Supplements 1 and 2 and generic correspondence such as generic letters and information notices). Such new or different guidance is marked by redlining in Revision 1. In most cases the new or different guidance is expected to result in the same number of reported events, or fewer reported events. Where there is an expected increase in the number of reported events, the number is small. On balance, the net effect is expected to be a modest reduction in the number of reported events.

Responses to the specific issues cited above are included in the discussions below.

Comment: Several comment letters objected to guidance in the Foreword and Sections 2.5 and 3.3.2 which requested voluntary reporting in certain circumstances for events that result in actuation of the systems listed in Table 2. The comments indicated that discussion of voluntary reporting in NUREG–1022 was not appropriate and would lead to enforcement problems.

Response: The Foreword has been deleted. Sections 2.5 and 3.3.2 have been revised and no longer call for voluntary reporting. They indicate that the reporting criterion is based on the premise that engineered safety features (ESFs) are provided to mitigate the consequences of a significant event, and the NRC staff considers the systems listed in Table 2 to be a reasonable interpretation of what constitutes systems provided to mitigate the consequences of a significant event.

Comment: Several comment letters objected to the discussion of relief valve testing in Section 2.7. The comments included the following: (1) The entire discussion should be deleted, (2) the discussion characterized relief valves with set points outside of technical specification (T.S.) limits as being inoperable although they were still capable of performing their safety functions, and (3) the example should simply be characterized as a condition or operation prohibited by the plant's T.S.

Response: The discussion of relief valve testing has been deleted from Section 2.7. The specific example of multiple relief valves with set points outside of T.S. limits has been moved to Section 3.2.2 and characterized as a condition or operation prohibited by the plant's T.S.

Comment: Some comment letters recommended that the definition of ''discovery date'' in Section 2.11, which starts the 30-day reportability clock for licensee event reports (LERs), be revised to allow for appropriate management and/or engineering review. One suggested definition, for example, was ''The discovery date is when someone in the plant recognizes that a reportable event has occurred or it is determined that an existing condition is reportable.''

Response: The NRC staff continues to conclude that the current guidance, which has been in use since 1984, is appropriate. Allowing additional time

for management and/or engineering review in the definition of discovery date could lead to open ended due dates for reporting.

Comment: Several comment letters objected to the guidance in Section 3.2.4 which indicates that lack of suitable redundancy means the nuclear power plant is in a condition outside of its design basis. The comments indicate that this guidance will call for one-hour telephone notification (as a condition outside design basis) for events that are currently reported via LER only (as a condition prohibited by T.S.).

Response: The NRC staff continues to conclude that a plant operating for an extended period of time without suitable redundancy in its emergency core cooling system (ECCS), for example, is operating outside the design basis of the plant, as defined in 10 CFR 50.2 and described in the Final Safety Analysis Report.

Comment: Two comment letters suggested that the plant being in a condition outside of its design basis should be applied at the plant level. It was suggested that this would mean determining whether the plant remained within the design bases of its principal barriers. The specific safety function (design bases) of each principal barrier would be limiting the release of radioactive material. Typical controlling parameters (design bases) would be quantities such as offsite dose, fuel clad temperature, fuel clad oxidation, hydrogen generation, core geometry, primary containment integrity and reactor coolant pressure boundary integrity.

Response: The NRC staff has deferred issuance of any new or different guidance, beyond the definition of ''design bases'' provided in § 50.2, pending consideration of rulemaking to clarify the extent of reporting required.

Comment: Some comment letters suggested adding guidance on the use of Probabilistic Risk Assessment (PRA) determinations to define or to bound the intent of the terms ''seriously degraded'' and ''significantly compromised.''

Response: Providing guidance on PRA as a tool to quantify plant risk for the purpose of making reportability decisions is beyond the scope of this report. Modification of event reporting requirements to make them more risk-informed has been identified as a future rulemaking initiative.

Comment: Some comment letters objected to the example of reporting the loss of part of a normal barrier between the reactor coolant system and the environment, for example, when one of the Event V isolation valves is inadvertently opened. The comments indicated that the discussion was too broad and should be deleted. They also indicated that loss of a single isolation valve and not the isolation function would not result in the plant being ''seriously degraded.''

Response: The example has been deleted.

Comment: Two comment letters objected to the statement in Section 3.2.7 that the unavailability of one non-redundant emergency assessment system would become reportable after 8 hours as a ''major loss of emergency assessment capability.'' The comments indicated that the 8-hour standard would be inconsistent with the allowed remedial action times in the plant's T.S.

Response: The 8-hour standard has been deleted.

Comment: One comment letter objected to the need to report starting of a charging pump in response to ''rapidly decreasing pressurizer level'' associated with a reactor coolant system leak, as discussed in Section 3.3.2. The comment stated that this appears to be a case of component level reporting that adds confusion to the guidance.

Response: The example has been retained. It shows that actuation of a component of an ESF should be reported if the ESF is needed to mitigate the consequences of the event, consistent with the statements of considerations for 10 CFR 50.72 and 50.73.

Comment: One comment letter objected to the statement in Section 5.1.5 that encourages the use of voluntary LERs, rather than information letters for example, for the purpose of voluntary reporting.

Response: The NRC staff continues to conclude that the current guidance, which has been in use since 1984, is appropriate. Voluntary reporting, and thus the format chosen, is non-mandatory. Use of the LER format will facilitate distribution of the information as well as entry into computerized data bases.

List of Comment Letters

1. John L. Crooks, letter dated 2/23/94
2. A.C. Passwater, Union Electric Company, letter dated 3/22/94
3. Burton A. Grabo, Arizona Public Service Company, letter dated 3/31/94
4. Thomas E. Tipton, Nuclear Energy Institute, letter dated 4/5/94
5. Daniel F. Stenger, William A. Horin, Mark J. Hedian, Winston & Strawn, letter dated 4/5/94
6. George A. Hunger, Jr., PECO Energy, letter dated 4/5/94
7. L.A. England, BWR Owner's Group, letter dated 4/5/94
8. Jerrold G. Dewease, Entergy Operations, Inc., letter dated 4/6/94
9. E.A. DeBarba, Northeast Utilities System, letter dated 4/5/94
10. Richard F. Phares, Illinois Power Company, letter dated 4/5/94
11. Bob Link, Wisconsin Electric Power Company, letter dated 4/4/94
12. C.A. Schrock, Wisconsin Public Service Corporation, letter dated 4/5/94
13. John S. Marshall, TUELECTRIC, letter dated 4/8/94
14. Richard M. Rosenblum, Southern California Edison Company, letter dated 3/30/94
15. D.W. Edwards, Yankee Atomic Electric Company, letter dated 4/4/94
16. Dave Morey, Southern Nuclear Operating Company, letter dated 4/5/94
17. J.T. Beckham, Georgia Power, letter dated 4/5/94
18. M.L. Bowling, Virginia Power, letter dated 4/27/94

Impact

NUREG–1022, Revision 1 clarifies and consolidates the guidance on implementing the event notification and reporting requirements in 10 CFR 50.72 and 50.73. Little of the guidance is new or different from the generic reporting guidance previously published in final form in NUREG–1022 (1983), its Supplement 1 (1984) and subsequent generic communications. Where it is different, the changes are minor. In some areas the new guidance will result in fewer reports and in some areas it will result in more reports. On balance, the clarified guidance will result in a small decrease in reporting burden.

The NRC has determined that this report is not a major rule and verified this determination with the Office of Management and Budget.

Paperwork Reduction Act Statement

This report amends the guidance for information collections contained in 10 Code of Federal Regulations (CFR) part 50 and NRC Form 366, Licensee Events Reports. The changes are considered to be insignificant when compared with the overall requirements of the CFR part and the form (NRC Form 366 reduction of 350 hours annually vs. the current 75K, and 10 CFR 50.72 reduction of 150 hours annually vs. the current 2.4K). NRC does not consider the burden change to be significant enough to trigger the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0011 and 3150–0104.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Planned Rulemaking

The NRC staff recognizes that there is also a need to revise 10 CFR 50.72 and 50.73 to correct weaknesses in the current rules, including elimination of unnecessary reporting, and better align the rules with the NRC's current needs, including support for the move toward risk-informed regulation. Accordingly, the staff plans to request permission to initiate rulemaking to address these areas. In the future, as rule changes are developed, appropriate changes to the guidance in NUREG–1022, Revision 1 will be developed as well.

Dated at Rockville, MD, this 3d day of February, 1998.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Safety Programs Division, Office for Analysis and Evaluation of Operational Data.

[FR Doc. 98–2994 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of Information Collection; OPM 1536

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for reclearance of the following information collection. OPM 1536, Former Spouse's Application for Survivor Annuity Under the Civil Service Retirement System, is designed for use by former spouses of Federal employees and annuitants who are applying for a monthly Civil Service Retirement System benefit. This application collects information about whether the applicant is covered by the Federal Employees Health Benefits Program and about any court order which awards the applicant retirement benefits.

Approximately 500 OPM Forms 1536 will be completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 375 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before March 8, 1998.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–2902 Filed 2–5–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, March 12, 1998, has been canceled and rescheduled for Thursday, March 19, 1998.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: January 30, 1998.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–2903 Filed 2–5–98; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections; the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Supplement to Claim of Person Outside the United States; OMB 3220–0155.

Under the Social Security Amendments of 1983 (Public Law 98–21), which amends Section 202(t) of the Social Security Act, the Tier I or the O/M (overall minimum) portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld effective January 1, 1985. The benefit withholding provision of P.O. 98–21 applies to divorces spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after the December 31, 1984; (2) are not U.S. citizens or U.S. nationals; and (3) have resided outside the U.S. for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the U.S., in effect on August 1, 1956, or a totalization agreement between the U.S. and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in P.L. 98–21.

RRB Form G–45, Supplement to Claim of Person Outside the United States, is used by the RRB to determine applicability of the withholding provision of P.L. 98–21. Completion of the form is required to obtain or retain

a benefit. One response is requested of each respondent.

The RRB proposes to revise Form G–45 to add language required by the Paperwork Reduction Act of 1995. Non-burden impacting reformatting and minor editorial changes are also proposed. The RRB estimates that 100 Form G–45's are completed annually. The completion time for Form G–45 is estimated at 10 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received on or before April 7, 1998.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–2965 Filed 2–5–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23017; 812–10570]

American Odyssey Funds, Inc., et al.; Notice of Application

February 2, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and materially amend investment subadvisory agreements without shareholder approval.

Applicants: American Odyssey Funds, Inc. (''AOF'') and American Odyssey Funds Management. Inc. (the ''Manager'').

FILING DATE: The application was filed on March 12, 1997 and amended on October 9, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 27, 1998 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants, Two Tower Center, East Brunswick, New Jersey 08816.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (Tel. 202–942–8090).

Applicants' Representations

1. AOF is a Maryland corporation registered under the Act as an open-end management investment company currently offering six series (the ''Funds''.[1] Shares of each Fund are sold only to variable contract separate account and qualified retirement plans. A majority of each Fund's shares underlie variable annuity contracts held by contract owners.

2. The Manager, a wholly-owned indirect subsidiary of Travelers Group Inc. and a member of the Copeland Companies (a related group of indirect subsidiaries of Travelers Group Inc.) is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). AOF has entered into an investment management agreement (the ''Management Agreement'') with the Manager. The Manager has overall supervisory and administrative responsibility for each of the Funds, and selects and supervises one or more subadvisers for each Fund. The Manager is paid a fee by each Fund based on its average daily net assets.

3. Subject to the general supervision of the board of directors of AOF (the ''Board''), the Manager (a) Sets each Fund's overall investment strategies; (b) evaluates, selects, and recommends subadvisers to manage all or a part of each Fund's assets; (c) monitors and evaluates the subadvisers' investment program and results; and, (d) reviews each Fund's compliance with its investment objectives, policies, and restrictions. In addition, the Manager recommends to the Board whether subadvisers' agreements should be renewed, modified, or terminated. The Manager and a consultant retained by the manager to help it evaluate subadvisers, provide information to the Board to aid it in making its determinations. The Board generally reviews comparative information provided by the Manager and the consultant regarding fees charged by other investment advisers for similar services. The Board receives quarterly reports for its regular meeting regarding the performance of each subadviser and the results of the Manager's evaluation and monitoring functions. The reports provide an overall assessment of the investment subadviser and, if appropriate, would include any recommendation for action with respect to the subadvisory agreement.

4. The subadvisers, each of which is an investment adviser registered under the Advisers Act, furnished discretionary investment advisory services in connection with the management of the Funds. A subadviser has some or all of a Fund's assets allocated to it and is responsible for the day-to-day investment management of those assets, subject to the Fund's investment objectives and policies and to the Manager's supervision.

5. Each Fund currently has a single subadviser, except for the American Odyssey Emerging Opportunities Fund, which has two subadvisers. AOF may employ multiple subadvisers for any Fund in the future. Currently, subadvisers' fees are paid by the Manager out of the fees paid by a Fund to the Manager at rates negotiated by the Manager. The Manager pays each subadviser a fee using a formula based on average daily net assets of the Fund. At a special meeting held on April 23, 1997, persons having voting rights[2] approved a new Management Agreement between AOF and the Manager that will become effective only if the relief requested in the application is granted. Under the new Management Agreement, AOF would pay all subadvisory fees directly, rather than paying those fees to the Manager (who would then pay the appropriate fee to each subadviser), based upon net assets

[1] Applicants request that the order exempt all current and future series of AOF.

[2] Depending upon applicable law or the terms of the insurance contract or qualified plan, the right to vote shares is held by contract owners, insurance companies, plan participants, or plan trustees (collectively, ''persons having voting rights'').

allocated to the subadviser. The new Management Agreement would authorize AOF and the Manager to enter into new subadvisory agreements at fee rates different than the current ones, provided that any new fee rate is less than or equal to a maximum fee rate approved by persons having voting rights with respect to the applicable Fund. These maximum fee rates are slightly higher than the fee rates currently in effect in order to provide AOF and the Manager some flexibility if they determine they can obtain superior subadvisory services by paying slightly higher fees.

6. Applicants request an exemption to permit the Manager and AOF to enter into and amend subadvisory agreements without approval by persons having voting rights with respect to the Funds. The Management Agreement between the Manager and AOF would continue to be subject to the shareholder voting requirements of section 15(a).

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provided that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants believe that under AOF's manager/subadviser structure, subadvisers take the place of individual portfolio managers in a conventional fund context. Applicants state that investors expect the Manager to select and retain subadvisers who successfully meet the Fund's objectives and policies and replace those who do not. Applicants assert that persons having voting rights have determined to rely on the Manager's ability to select, monitor, and terminate subadvisers. Applicants contend that requiring shareholder approval of subadvisers and subadvisory agreements would impose costs on the Funds without advancing shareholder interests.

3. Applicants will not enter into or amend any subadvisory agreement that would increase the subadvisory fee beyond the maximum fee approved by persons having voting rights with respect to the applicable Fund, without such agreement, including the compensation to be paid thereunder, being approved by the persons having voting rights with respect to the applicable Fund.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Before any Fund may rely on the order requested in this application, the operation of the Fund in the manner described in the application will be approved by a majority vote of persons having voting rights with respect to the Fund, or, in the case of a new Fund whose prospectus contains the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

2. Any Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, any such Fund will hold itself out to the public as employing the ''manager/subadviser'' structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee the subadvisors and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to AOF and, subject to the review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select, and recommend subadvisers to manage all or a part of a Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among subadvisers; (d) monitor and evaluate subadviser performance; and (e) oversee subadviser compliance with the applicable Fund's investment objective, policies, and restrictions.

4. A majority of the Fund's Board will be persons who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of AOF (''Independent Directors''), and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

5. AOF will not enter into a subadvisory agreement with any subadviser that is an ''affiliated person'' of the Fund (as defined in section 2(a)(3) of the Act) (''Affiliated Subadviser'') other than by reason of serving as subadviser to one or more Funds without such subadvisory agreement, including the compensation to be paid thereunder, being approved by the persons having voting rights with respect to the applicable Fund.

6. When a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the applicable Fund and persons having voting rights with respect to that Fund and that such change does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives inappropriate advantage.

7. No director, trustee, or officer of AOF or the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a subadviser except for ownership of (a) interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a subvadviser or an entity that controls, is controlled by, or is under common control with a subadviser.

8. Within 90 days of the hiring of any new subadviser, the Manager will furnish person having voting rights with respect to the appropriate Fund with all information about the new subadviser or subadvisory agreement that would be included in a proxy statement. Such information will include any changes caused by the addition of a new subadviser. To meet this condition, the Manager will provide persons having voting rights with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3008 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26822]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 2, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 20, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation, et al. (70–9133)

Ameren Corporation (''Ameren''), a recently formed public utility holding company that will register under the Act, its service company, Ameren Services Company (''AMS''), a public utility subsidiary, Union Electric Company (''UE''), and its subsidiary, Union Electric Development Company (''UEDC''), each of which is located at 1901 Chouteau Avenue, St. Louis, Missouri 63103; a second public utility company, Central Illinois Public Service Company (''CIPS'') and CIPSCO Investment Company (''CIC''), each located at 607 East Adams, Springfield, Illinois 62739; and a third public utility company, Electric Energy Incorporated (''EEI''), 2100 Portland Road, Joppa, Illinois 62953, (''Applicants'') have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 42, 43, 45 and 54 thereunder.

By order dated December 30, 1997 (HCAR No. 26809), the Commission authorized Ameren, under section 9(a)(2) of the Act to acquire all of the outstanding securities of CIPS and UE, and related transactions. (''Merger Order''). After consummation of the merger transactions, Ameren will register as a holding company under the Act. UE, CIPS and EEI are hereafter referred to collectively as ''Utility Subsidiaries.'' AMS, UEDC and CIC are hereafter referred to collectively as ''Non-Utility Subsidiaries.'' Non-Utility Subsidiaries together with Utility Subsidiaries are ''Subsidiaries.''

As described more fully below, the Applicants seek authority, through January 31, 2003 (''Authorization Period''), for: (1) Ameren to issue common stock, debt, and other securities; (2) the Utility Subsidiaries to issue capital stock and debt securities, including short-term debt, and interest rate swaps; (3) intrasystem financing among Ameren and its Non-Utility Subsidiaries, including the ability to issue guarantees; and (4) the Subsidiaries to alter their capital stock.

The following general terms will be applicable to the financing transactions for which authority is sought: (1) The effective cost of money on short-term debt financings and credit lines may not exceed 300 basis points over the six-month London Interbank Offered Rate; (2) the effective cost of money on preferred stock and other fixed income oriented securities, when issued, may not exceed 500 basis points over the interest rate on 30-year U.S. Treasury securities; and (3) issuance expenses in connection with any non-competitive offerings of securities, including any underwriting fees, commission or other similar compensation, will not exceed 5% of the principal or total amount of the securities being issued. Ameren represents that at all times during the Authorization Period its common equity will be at least 30% of its consolidated capitalization.

The proceeds from the financings will be used for general and corporate purposes, including: (1) Capital expenditures of Ameren or its Subsidiaries; (2) the repayment, redemption, refunding or purchase of debt and capital stock of Ameren or its Subsidiaries without the need for prior Commission approval; (3) working capital requirements and capital spending of the Ameren system; and (4) other lawful general purposes.

1. Ameren External Financings

Ameren may obtain funds externally through sales of common stock and/or debt financing, including commercial paper sales.

a. Common Stock

In the Merger Order, the Commission authorized Ameren to issue 137,215,462 shares of common stock in exchange for all outstanding shares of UE and CIPSCO. In addition, Ameren was authorized to issue and/or acquire up to 15 million shares of Ameren common stock in open market transactions over the period ending December 30, 2003, for purposes of Ameren's proposed benefit and dividend reinvestment plan and certain employee benefit plans of UE, CIPS and Ameren Services that will use Ameren common stock.

Ameren requests authority to issue up to 15 million additional shares of Ameren common stock for general corporate purposes other than for use in the DRIP or the benefit plans described in the Merger Order.

Common stock financing may be issued and sold pursuant to underwriting agreements of a type generally standard in the industry. Public distributions may be made pursuant to private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other nonpublic offerings to one or more persons. Securities may be sold through underwriters or dealers, through agents, directly to a limited number of purchasers (or to trusts established for their benefit) and other shareholders through Ameren Stock Plans.

b. Indebtedness

Ameren proposes, through the Authorization Period, to issue commercial paper and/or other short-term debt aggregating not more than $300 million outstanding at any one time to be used for general corporate purposes.

Ameren may sell commercial paper, from time to time, in established domestic paper markets. Such commercial paper would be sold to dealers at the discount rate per annum prevailing at the date of issuance from commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Ameren will reoffer such paper at a discount to corporate, institutional investors such as commercial banks, insurance companies, pension funds,

investment trusts foundations, colleges and universities, finance companies and nonfinancial corporations.

Ameren proposes to establish back-up bank lines in an aggregate principal amount not to exceed the amount of authorized commercial paper. In addition, Ameren may enter into credit agreements or other borrowing facilities with commercial banks, trust companies or other lenders providing for revolving credit or term loans during commitment periods not longer than the Authorization Period. The proceeds of such borrowings will be used for general corporate purposes.

2. Utility Subsidiary External Financings

The Utility Subsidiaries request authorization to engage in certain external financings which are outside the scope of the rule 52 exemption for financings of utility companies and for interest rate swaps.

a. Commercial Paper

The Utility Subsidiaries propose to issue commercial paper, through the Authorization Period, up to the following aggregate amounts: UE—$575 million; CIPS—$125 million; and EEI—$60 million.

The Utility Subsidiaries may maintain back-up lines of credit in an aggregate principal amount not to exceed the amount of authorized commercial paper. Borrowings pursuant to commercial paper and related credit lines will not exceed $575 million for UE, $125 million for CIPS or $60 million for EEI to be outstanding at any one time.

b. Credit Lines

The Utility Subsidiaries propose to establish credit lines and issue notes, through the Authorization Period, up to the aggregate amounts of $425 million for UE, $125 million for CIPS, and $35 million for EEI. Proceeds from these borrowings will be used for general corporate purposes in addition to credit lines to support commercial paper as described in subsection (a) above.

c. Interest Rate Swaps

The Utility Subsidiaries propose to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements to the extent the same are not exempt under rule 52. Each Utility Subsidiary may employ interest rate swaps as a means of managing risk associated with any of its issued outstanding debt.

The Utility Subsidiaries request authorization to make and continue use of financial hedging instruments in connection with natural gas procurement and other utility operations. The Utility Subsidiaries will not engage in speculative transactions.

3. Intrasystem Financings for Non-Utility Subsidiaries

a. Guarantees

Ameren proposes to obtain letters of credits, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Non-Utility Subsidiaries as may be appropriate to enable such system companies to carry on in the ordinary course of their respective businesses, in an aggregate principal amount not to exceed $300 million outstanding at any one time. Such credit support may be in the form of committed bank lines of credit.

In addition, authority is requested for the Non-Utility Subsidiaries to enter into arrangements with each other similar to that described with respect to Ameren above, in an aggregate principal amount not to exceed $50 million outstanding at any one time, except to the extent that the same are exempt pursuant to rule 45.

4. Changes in Capital Stock of Subsidiaries

The portion of an individual Subsidiary's aggregate financing to be affected through the sale of stock to Ameren or other immediate parent company during the Authorization Period cannot be ascertained at this time. It may happen that the proposed sale of capital stock may in some cases exceed the then authorized capital stock of such Subsidiary. In addition, the Subsidiary may choose to use other forms of capital stock. As needed to accommodate the proposed transactions and to provide for future issues, request is made for authority to increase the amount or change the terms of any such Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Ameren or other immediate parent company in the instant case. A Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3007 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23016; File No. 812–10850]

Security Benefit Life Insurance Company, et al.; Notice of Application

January 30, 1998.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for order pursuant to sections 17(b) and 26(b) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY OF APPLICATION: Applicants seeks an order approving the substitution of shares of the Prime Obligations Series of the Parkstone Advantage Fund (the ''Trust'') for shares of Series C of SBL Fund. Thereafter, Series C of SBL Fund, together with other series of the Trust, SBL Fund and Liberty Variable Investment Trust will continue to serve as the eligible funding vehicles for individual deferred variable annuity contracts (''Contracts'') offered by Security Benefit Life Insurance Company (the ''Company'') for which the Parkstone Variable Annuity Account of Security Benefit Life Insurance Company serves as the funding medium.

APPLICANTS: Security Benefit Life Insurance Company and Parkstone Variable Annuity Account of Security Benefit Life Insurance Company (the ''Account'').

FILING DATE: The application was filed on October 30, 1997 and amended and restated on January 8, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing regarding this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. EST on February 24, 1998, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be

notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission: 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Security Benefit Life Insurance Company, 700 S.W. Harrison Street, Topeka, Kansas 66636–0001. Copies to Jeffrey S. Puretz, Esq., Dechert Price & Rhoads, 1500 K Street, N.W., Suite 500, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Susan M. Olson, Attorney or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W. Washington, D.C. 20549 (202–942–8090).

Applicants' Representations

1. The Company is a mutual life insurance company organized under the laws of the state of Kansas on February 22, 1892. The Company became a mutual life insurance company under its current name on January 2, 1950. The Company offers variable annuities and variable life insurance and is authorized to do business in the District of Columbia and all states except New York.

2. The Account is a segregated asset account of the Company. The Account was established by the Company on February 22, 1993, pursaunt to the provisions of the insurance laws of the state of Kansas. The Account is a registered unit investment trust that is currently divided into twelve sub-accounts or divisions (''sub-account'') that correspond to five series of the Trust, including the Prime Obligations Series, four series of the SBL Fund and three series of the Liberty Variable Investment Trust (the ''Liberty Trust''). The Account serves as the funding medium for the Contracts.

3. The Contracts are individual flexible purchase payment deferred variable annuity contracts. The Contracts provide for the accumulation of values on a variable basis, a fixed basis, or both, during the accumulation period and provide several options for annuity payments on a variable basis, a fixed basis, or both. The Contracts are eligible for purchase as individual non-tax qualified retirement plans. The Contracts are also eligible for purchase in connection with retirement plans qualified under Section 401, 403(b), 408, or 457 of the Internal Revenue Code of 1986. The Contracts provide for investment in, among other options, the Prime Obligations Series sub-account of the Account, which invests in the Prime Obligations Series of the Trust. Other series of the Trust and certain series of the SBL Fund and the Liberty Trust are offered as investment options under the Contracts.

4. The Trust filed its initial registration statement on July 6, 1993. The Trust is a Massachusetts business trust registered as a series type open-end management investment company. The Trust currently consists of 5 series (''Series''), including the Prime Obligations Series (''Prime Obligations Series''). The investment management of the Trust is First of America Investment Corporation (''FAIC''), a wholly-owned subsidiary of FOA-Michigan, which is a wholly-owned subsidiary of First of America Bank Corporation.

5. SBL Fund (the ''Fund'') is a Kansas corporation that was organized on May 26, 1977, to serve as the investment vehicle for certain of the Company's variable annuity and variable life separate accounts. The Fund filed its initial registration statement in 1977. Series C of the Fund (''Series C'') commenced operations in 1977. The investment manager of the Fund is Security Management Company LLC, a wholly owned subsidiary of the Company. Series C is currently available under variable annuity and variable life insurance contracts offered by the Company, including the Contracts.

6. The Company on its own behalf and on behalf of the Account proposes to effect a substitution of shares of Series C for all shares of the Prime Obligations Series attributable to the Contracts (the ''Substitution''). The Company believes that it is in the best interests of owners of the Contracts (''Owners'') to substitute shares of Series C for shares of the Prime Obligations Series. The Company will pay all expenses and transaction costs of the Substitution, including any applicable brokerage commissions. The Company states that it has amended the prospectus for the Account in order to provide Owners with information concerning the proposed Substitution.

7. The Company states that the overall investment objectives of the Prime Obligations Series and Series C are sufficiently similar to be appropriate for substitution. The Prime Obligations Series seeks current income with liquidity and stability of principal. Series C seeks a high level of current income consistent with preservation of capital. Applicants state that the Prime Obligations Series and Series C share the primary objective of seeking current income and both funds are money market series managed in accordance with Rule 2a–7 under the 1940 Act. The Prime Obligations Series seeks to maintain a stable net asset value of $1.00 per share. The Company states that although Series C does not seek to maintain a stable net asset value, the funds have similar investment objectives, and therefore Substitution is appropriate because Series C is sufficiently similar to the Prime Obligations Series.

8. Applicants state that the Prime Obligations Series has not generated the interest that was anticipated at the time of its creation. During the period of almost four years from the commencement of operations of the Prime Obligations Series to June 30, 1997, net assets have grown to $3,427,772. Net assets for Series C as of June 30, 1997 were $138,375,916. The following table sets forth net assets for the Prime Obligation Series and Series C for the years ending December 31, 1994, December 31, 1995 and December 31, 1996. Net assets for each fund as of June 30, 1997 are also included.

NET ASSETS

Fund	June 30, 1997	Dec. 31, 1996	Dec. 31, 1995	Dec. 31, 1994
Prime Obligations	$3,427,772	$3,579,203	$2,944,914	$2,204,277
Series C	138,375,916	128,672,113	105,435,680	118,668,327

9. Applicants state that at all times since inception, the assets of the Prime Obligations Series have been relatively small. Applicants submit that the Prime Obligations Series has not generated a sufficient level of assets to be a viable mutual fund portfolio. Applicants state that the Prime Obligations Series has had relatively high expense ratios and that the expenses for Series C are lower than the Prime Obligations Series. Applicants state that Owners will not

be exposed to higher expenses following the Substitution of Series C for the Prime Obligation Series and in fact will benefit from lower expense ratios. The following table sets forth expense information for the two funds.

ANNUAL TOTAL EXPENSES

[As a percentage of average net assets]

Fund	Total expenses for 6 months ended June 30, 1997	Total expenses for fiscal year ended Dec. 31		
		1996	1995	1994
Prime Obligations Series	*1.97	1.01	1.64	1.90
Series C	*.58	.58	.60	.61

*Annualized.

10. Applicants state that the Company has also considered the comparative investment performance of the Prime Obligations Series and Series C. Applicants submit that the performance of Series C has been similar or superior to the investment performance of the Prime Obligations Series. The total returns for each fund for the six month period ended June 30, 1997, and the fiscal year ended December 31, 1996, were as follows:

TOTAL RETURN

[In percent]

Fund	Six months ended June 30, 1997	Year ended Dec. 31, 1996**
Prime Obligations	*1.75	4.46
Series C	*2.5	5.10

*Not annualized.
**As set forth in the Trust's prospectus, dated April 30, 1997, and the Fund's prospectus, dated October 15, 1997.

11. Applicants state that the Substitution will occur as soon as practicable following the issuance of the order requested by Applicants. Approximately thirty days before the Substitution, the Company will send to Owners written notice of the Substitution (the ''Notice'') stating that shares of Prime Obligations Series will be eliminated and that the shares of Series C of the Fund will be substituted. The Company will refer in such mailing to the recent mailing to Owners of the prospectus for the Account, which describes the Substitution and the prospectuses for the underlying mutual funds. The Company will also state that such prospectuses may be obtained at no cost by calling the Company's toll free customer service line.

12. Applicants state that Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets to any other available sub-account, without limitation and without charge. The 30 day period from the mailing of the Notice is herein referred to as the ''Free Transfer Period.'' The prospectus for the Account states that the first 12 transfers in any calendar year are without charge, and additional transfers are subject to a charge of $25. The Notice will also provide that a transfer from the Account during the Free Transfer Period will be without charge and will not count as one of the 12 transfers that may be made without charge. Following the Substitution, Owners will be afforded the same contract rights with regard to amounts invested under the Contracts, as they currently have.

13. The Company added to the Account seven new investment options, including Series C, which became available December 1, 1997. New sub-accounts have become investment options under the Contracts, including one that invests in Series C. Immediately following the Substitution, Applicants state that the Company will treat, as a single sub-account of the Account, the sub-account invested in Prime Obligations Series and the sub-account investing in Series C. The Company will reflect this treatment in disclosure documents for the Account, the financial statements of the Account, and the Form N–SAR annual report filed by the Account.

14. Applicants state that the Company will redeem entirely for cash all the shares of Prime Obligations Series it currently hold on behalf of Prime Obligations Series sub-account of the Account at the close of business on the date selected for the Substitution. All shares of the Prime Obligations Series held by the Prime Obligations Series sub-account of the Account are attributable to Owners. The Company on behalf of the Prime Obligations Series sub-account of the Account will simultaneously place a redemption request with the Prime Obligations Series and a purchase order with Series C of the Fund so that the purchase will be for the exact amount of the redemption proceeds. Applicants note that the Prime Obligations Series of the Trust will process the redemption request, and Series C of the Fund will process the purchase order, at prices based on the current net asset value per share next computed after receipt of the redemption request and purchase order and, therefore, in a manner consistent with Rule 22c–1 under the 1940 Act. At all times, monies attributable to Owners currently invested in the Prime Obligations Series will be fully invested. The full net asset value of redeemed shares held by Prime Obligations Series sub-account of the Account will be reflected in the Owners' accumulation unit value following the Substitution. The Company will assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of the Prime Obligations Series so that the full net asset value of redeemed shares of the Prime Obligations Series will be reflected in the Owner's accumulation units following the Substitution.

Applicant's Legal Analysis and Conclusions

1. Section 26(b) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approves such substitution.'' Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of Series C for the Prime Obligations Series.

3. Applicants submit that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants assert that the Substitution is an appropriate solution to the limited Owner interest or investment in the Prime Obligations Series, which is currently, and in the future may be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

4. Applicants submit that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) the Substitution is of shares of Series C, the objectives, polices, and restrictions of which are sufficiently similar to the objectives of the Prime Obligations Series;

(b) if an Owner so requests, during the Free Transfer Period, assets will be reallocated for investment in any other available sub-account of the Account. The Free Transfer Period is sufficient time for Owners to consider the Substitution;

(c) the Substitution will, in all cases, be at net asset value of there respective shares, without the imposition of any transfer or similar charge;

(d) the Company has undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the Substitution in a manner that attributes all transaction costs to the Company;

(e) the Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of the Company;

(f) the Substitution in no way will later the tax benefits to Owners and the Company has determined that the Substitution will not give rise to any tax consequences to Owners;

(g) Owners may choose simply to withdraw amounts credited to them following the Substitution under the conditions that currently exists; and

(h) the Substitution is expected to confer certain modest economic benefits to Owners by virtue of the enhanced asset size of Series C.

Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such persons from purchasing any security or other property form such registered investment company. Immediately following the Substitution, the Company will treat as a single sub-account of the Account, the sub-accounts investing in shares of Series C and the Prime Obligations Series. Applicants state that the Company could be said to be transferring until values between sub-accounts and that the transfer of unit values could be construed as purchase and sale transactions between sub-accounts that are affiliated persons. The sub-account investing in Series C could be viewed as selling shares of Series C to the sub-account investing in the Prime Obligations Series, in return for units of that sub-account. Conversely, Applicants submit that it could be said that the sub-account investing in the Prime Obligations Series was purchasing shares of Series C. Applicants state that since the sale and purchase transactions between sub-accounts could be construed as transactions with in the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, the Substitution requires an exemption from Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act.

Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) of the 1940 Act upon application if evidence establishes that

(a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned;

(b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports file under the 1940 Act; and

(c) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Applicants submit that the terms of the proposed transactions, as described in the Application: (a) Are reasonable and fair, including the consideration to be paid and received; (b) do not involve over-reaching; (c) are consisting with the policies of Series C of the Fund and the Prime Obligations Series of the Trust; and (d) are consistent with the general purposes of the 1940 Act.

8. Applicants anticipate that existing Owners will benefit from the Substitution. The transactions effecting the Substitution including the redemption of the shares of the Prime Obligations Series and the purchase of shares of Series C will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Owner interests, economically, will not differ in any measurable way form such interests immediately prior to the Substitution. Therefore, Applicants assert that the consideration to be received and paid is reasonable and fair. In addition, the Company believes, based on its review of existing federal income tax laws and regulations and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

9. Applicants state that the Substitution is consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. Applicants state that the proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Owners will be fully informed of the terms of the Substitution through the Notice and will have an opportunity to reallocate investments during the Free Transfer Period.

10. Applicants further represent that the transactions that may be deemed to be within the scope of Section 17(a) have been the subject of Commission review in the context of reorganizations of separate accounts from management separate accounts to unit investment separate accounts and the transfer of assets to an underlying fund. Applicants state that the terms and conditions of the transfer of assets entailed in the Substitution are consistent with such precedent and the precedent under Section 26(b).

11. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) or the 1940 Act upon application, subject to certain conditions.

12. Applicants request an order of the Commission pursuant to Section 17(b) granting exemptive relief from the provisions of Section 17(a) in connection with any aspects of the

Substitution that may be deemed prohibited by Section 17(a).

13. Applicants represent that the Substitution meets all of the requirements of Section 17(b) of the 1940 Act and that an order should be granted exempting the Substitution from the provisions of Section 17(a), to the extent requested.

Conclusion

For the reasons summarized above, Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions for the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2936 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 9, 1998.

An open meeting will be held on Tuesday, February 10, 1998, at 10:00 a.m. A closed meeting will be held on Tuesday, February 10, 1998, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday,

February 10, 1998, at 10:00 a.m., will be:

1. The Commission will hear oral argument on an appeal by L.C. Wegard & Co., Inc., a registered broker-dealer, and Leonard B. Greer, the firm's president, from an administrative law judge's initial decision.

FOR FURTHER INFORMATION CONTACT: William S. Stern at (202) 942–0949.

2. The Commission will consider whether to issue a release adopting amendments to Regulation S. The amendments are designed to stop abusive practices in connection with offerings of equity securities purportedly made in reliance on Regulation S.

FOR FURTHER INFORMATION CONTACT: Felica H. Kung, Division of Corporation Finance, at (202) 942–2990.

3. The Commission will consider whether to propose amendments to Rules 15c2–11 and 17a–4 under the Securities Exchange Act of 1934. The proposed amendments to Rule 15c2–11 would require all broker-dealers to: (a) obtain and review enhance information about the issuer when they first publish or resume publishing a quotation for a covered security; (b) document that review; (c) update the issuer information annually if they publish priced quotations; and (d) make the information available to other persons upon request. The proposed amendment to Rule 17a–4 would incorporate the record retention requirements currently contained in Rule 15c2–11.

FOR FURTHER INFORMATION CONTACT: Alan Reed, Division of Market Regulation, at (202) 942–0772.

4. The Commission will consider whether to propose amendments to Securities Act Form S–8, the streamlined form companies use to register sales of securities to their employees. The amendments would (a) restrict the use of the form for the sale of securities to consultants and advisors, and (b) allow the use of the form for the exercise of stock options by family members of employee optionees. The Commission also will consider proposing a corresponding amendment to Form S–3, as well as amendments to the executive compensation disclosure requirements to clarify reporting of transferred options. The purposes of the proposed changes are to eliminate the abuse of Form S–8 to register securities issued to consultants for capital-raising purposes, and to facilitate legitimate employee estate planning transactions and other intra-family transfers.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf at (202) 942–2900.

The subject matter of the closed meeting scheduled for Tuesday, February 10, 1998, following the 10:00 a.m. open meeting, will be:

Post argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 3, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–3117 Filed 2–3–98; 4:00 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39604; File No. SR–CBOE–97–66]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Providing a Definition of Foreign Broker-Dealer

January 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rules 7.4(a) and 8.51(a) and adopt new Rule 1.1(xx) to provide that a foreign broker-dealer is considered a broker-dealer for certain purposes under Exchange Rules.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has

prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend certain rules of the Exchange applicable to the options transactions of broker-dealers so that they may apply consistently to all broker-dealers irrespective of the country in which they conduct their activities. This will assure that broker-dealers operating outside the United States do not enjoy a competitive advantage over their U.S. counterparts.

CBOE Rules 7.4(a) and 8.51(a) currently distinguish between orders for broker-dealers and orders for non-broker-dealers. Under these rules, and certain rules governing the Exchange's automatic execution system (the Retail Automatic Execution System or ''RAES'') which incorporate Rule 7.4(a) by reference, only the market or limit orders of non-broker-dealer customers may be placed with an Order Book Official, or may utilize RAES, or may be eligible for a guaranteed minimum execution of ten contracts (or more, depending on the option class) on the floor of the Exchange.[1] The proposed rule change defines the term ''broker-dealer,'' as used in these rules, to include a foreign broker-dealer. To accomplish this, the Exchange proposes to adopt the following definition of ''foreign broker-dealer'' for purposes of Rules 7.4(a) and 8.51(a):

''The term 'foreign broker-dealer' means any person or entity that is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization (or is required to be so registered, authorized or licensed) to perform the function of a broker or dealer in securities, or both. For purposes of this definition, the terms 'broker' and 'dealer' have the same meaning as provided in Section 3(a)(4) and 3(a)(5) of the Exchange Act, except that a 'broker' or 'dealer' may be a bank.[2]

The Exchange believes that the proposed definition is sufficiently specific to ensure fair enforcement of the Rules to which it applies. It should not be difficult for the Exchange to determine whether a person or entity is registered by a foreign governmental agency or a foreign regulatory organization to perform specified functions, or is required to be so registered. As a member of the Intermarket Surveillance Group (''ISG''), CBOE may promptly obtain from ISG members and affiliates information on the accounts of persons or entities entering orders for execution on CBOE, including whether such orders have been entered for the account of a broker or dealer.[3] The Exchange may also obtain this information from foreign exchanges or foreign regulatory authorities with which it has an effective surveillance sharing agreement or that are subject to a memorandum of understanding with the Commission that would require those entities to provide such information to the Exchange upon request.

The Pacific Exchange (''PCX'') recently sought and received Commission approval for a rule change similar to the proposed rule change that is the subject of this filing.[4] In its filing, the PCX noted that based upon its review of the applicable regulatory structures of various foreign jurisdictions, it believed that the proposed definition was sufficiently specific to cover the foreign equivalents of the U.S. brokers and dealers in a number of foreign jurisdictions, including Australia, Canada, the Czech Republic, France, Germany, Hong Kong, Hungary, Japan, Luxembourg, Mexico, the Netherlands, Poland, South Africa, South Korea, the Slovak Republic, Switzerland, and the United Kingdom.[5]

The Exchange also notes that the proposed definition of ''foreign broker-dealer'' contains objective criteria for its application and is narrower in scope than the definition of ''foreign broker or dealer'' specified in Rule 15a–6(b)(3) under the Act.[6] In addition, the Exchange believes the proposed definition is substantially similar in form and substance to Rule 17a–7(c) under the Act (definition of nonresident brokers and dealers) and Sections 3(a)(50) and (52) of the Act (definitions of foreign securities authority and foreign regulatory authority).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W.,

[1] CBOE Rule 7.4(a) provides that ''[n]o member shall place, or permit to be placed, an order with a Board Broker or Order Book Official for an account in which * * * any non-member broker-dealer has an interest.'' Rule 6.8, one of the rules governing RAES, limits its use to ''[s]uch order * * * as defined in Rule 7.4(a) regarding placing of orders on the public customer book.'' Rule 8.51(a) provides that ''[o]nly non-broker dealer customer orders shall be entitled to an execution'' under that Rule.

[2] Sections 3(a)(4) and 3(a)(5) of the Act provide:

''(4) The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of other, but does not include a bank.

(5) The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.''

[3] ISG was created in February 1981 to design, develop and implement a coordinated intermarket surveillance system among securities markets in the United States. On July 14 1983, the exchanges participating in the ISG entered into an agreement to coordinate more effectively surveillance and investigative information sharing agreements in stock and options markets. In 1989, with the active participation of the SEC and Commodity Futures Trading Commission, the ISG created an ''affiliate'' category for futures exchanges and non-U.S. SROs. Currently, the ISG is comprised of nine members and 15 affiliates.

[4] *See,* File No. SR–PSE–96–46 approved in Exchange Act Release No. 38420 (March 19, 1997), 62 FR 14488 (March 26, 1997).

[5] Furthermore, on December 2, 1997, the Commission approved a proposed rule change filed by the Philadelphia Stock Exchange (''Phlx'') to amend its definition of ''foreign broker-dealer'' along the same lines as the PCX. *See,* Exchange Act Release No. 39382 (December 2, 1997), 62 FR 64903 (December 9, 1997).

[6] Rule 15a–6(b)(3) provides: ''the term 'foreign broker or dealer' shall mean any non-U.S. resident person (including any U.S. persons engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the Act.''

Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–97–66 and should be submitted by [insert date 21 days from the date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds the proposed rule change is consistent with Section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(5) in particular in that, by eliminating unintended differences in treatment between broker-dealers acting within the United States and those acting in other countries, it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the CBOE's proposal is consistent with Section 11A of the Act because it will promote fair competition among brokers and dealers.[8]

In particular, with regard to the CBOE's rules governing the Exchange's automatic execution system that distinguish between broker-dealer orders and non-broker-dealer orders, the Commission finds it is fair to treat foreign broker-dealers in a manner similar to U.S. broker-dealers for purposes of such rules. Accordingly, all broker-dealers, whether U.S. registered or foreign will be prohibited from placing market or limit orders with an Order Book Official, utilizing RAES, or benefiting from guaranteed minimum executions.

As mentioned in the PCX's approval order, the Commission believes that the proposed definition of foreign broker-dealer provides an objective and verifiable standard that is capable of fair enforcement. In particular, the Exchange's surveillance staff should be able to confirm relatively quickly whether a person or entity is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization to perform the functions of a broker or dealer as defined in the Act.

The proposed rule change will make the CBOE's rules consistent with those of the PCX and Phlx. Because the PCX's nearly identical filing was approved after being noticed for the applicable comment period, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–97–66) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3010 Filed 2–5–98; 8:45 am]

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[7] 15 U.S.C. § 78f(b).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39608; File No. SR–Philadep–97–06]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Corporate Governance Changes

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 22, 1997, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been primarily prepared by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves amendments to Philadep's by-laws to reflect its current winding down of operations and to streamline its board of directors and committee structures.[2] More specifically, the proposed rule change involves amendments to Philadep's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Philadep's by-laws to reflect its winding down of operations and to streamline its board of directors and committee structures.[5] In addition, the proposed rule change amends Article IV of Philadep's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors. The by-laws now define nonparticipants as (a) persons who are not officers, directors, or employees of participants and persons who have not been employed in any such capacity at any time within the prior three years and (b) persons who (i) do not have a consulting nor employment relationship with the Philadelphia Stock Exchange, Incorporated (''PHLX''), Stock Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR–Philadep–97–04 and SR–SCCP–97–04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

[3] Pursuant to the Commission's administrative proceedings order entered against Philadep, Philadep is required to amend its by-laws to require that nonparticipant directors fill fifty percent of Philadep's board of directors. In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Administrative Proceeding File No. 3–9360, Securities Exchange Act Release No. 38918 (August 11, 1997).

[4] The Commission has modified the text of the summaries prepared by Philadep.

[5] These changes: (a) Require Philadep to call a special meeting of shareholders if the by-laws regarding composition of the board are to be amended, (b) limit the nominating committee to three persons selected by the chairman of the board, (c) allow the chairman, instead of the president, to call special meetings of shareholders and of the board, and (d) reduce the number of board committees to an audit committee, a finance committee, and a nominating committee.

Corporation of Philadelphia (''SCCP''), or Philadep, (ii) do not provide professional services to PHLX, SCCP, or Philadep, and (iii) have not had any such relationship nor have provided any such services at any time within the prior three years. The proposed rule change also reduces the number of directors that may serve at one time from not less than fifteen or more than seventeen to not less than five or more than nine.

Philadep believes the proposed rule change is consistent with Section 17A(b)(3)(F)[6] of the Act because the amendments to its by-laws reflect its winding down of operations. In particular, Philadep believes that the proposed governance changes, such as the change in the composition of the board of directors, will help protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep believes that the proposed rule change will not impose a burden on competition not contemplated under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest. The Commission believes that the change in the composition of Philadep's board of directors should help Philadep to better safeguard securities and funds and to better protect investors and the public interest. The requirement that nonparticipant directors compose at least fifty percent of the director positions on the board of directors will provide a more diverse governance structure for Philadep. If carefully selected, nonparticipant directors should bring diverse experience to the board and thus enable Philadep to better perform its self-regulatory obligations. In addition, the Commission believes that the changes Philadep is making in connection with the termination of its depository business are being made in a manner that is consistent with Philadep's obligations under Section 17A of the Act.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow Philadep to institute reforms called for in the settlement of its administrative proceedings in an expedient fashion.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the File No. SR–Philadep–97–06 and should be submitted by February 27, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Philadep–97–06) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3009 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39609; File No. SR–SCCP–97–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Corporate Governing Changes

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 22, 1997, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been primarily prepared by SCCP. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves amendments to SCCP's by-laws to reflect its current restructured securities clearing business and to streamline its board of directors and committee structures.[2] More specifically, the proposed rule change involves amendments to SCCP's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR–Philadep–97–04 and SR–SCCP–97–04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

[3] Pursuant to the Commission's administrative proceedings order entered against SCCP, SCCP is required to amend its by-laws to require that nonparticipant directors fill fifty percent of SCCP's board of directors. In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Administrative Proceeding File No. 3–9360, Securities Exchange Act Release No. 38918 (August 11, 1997).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule amends SCCP's by-laws in order to reflect its restructured securities clearing business and to streamline its board of directors and committee structures.[5] In addition, the proposed rule change amends Article IV of SCCP's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors. The by-laws now define nonparticipants as (a) Persons who are not officers, directors, or employees of participants and persons who have not been employed in any such capacity at any time within the prior three years and (b) persons who (i) Do not have a consulting nor employment relationship with the Philadelphia Stock Exchange, Incorporated (''PHLX''), SCCP, or Philadelphia Depository Trust Company (''Philadep''), (ii) do not provide professional services to PHLX, SCCP, or Philadep, and (iii) have not had any such relationship nor have provided any such services at any time within the prior three years. The proposed rule change also reduces the number of directors that may serve at one time from not less than fifteen or more than seventeen to not less than five or more than nine.

SCCP believes the proposed rule change is consistent with Section 17A(b)(3)(F)[6] of the Act because the amendments to its by-laws reflect its restructured securities clearing business. In particular, SCCP believes that the proposed governance changes, such as the change in the composition of its board of directors, will help protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP believes that the proposed rule change will not impose a burden on competition not contemplated under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest. The Commission believes that the change in the composition of SCCP's board of directors should help SCCP to better safeguard securities and funds and to better protect investors and the public interest. The requirement that nonparticipant directors compose at least fifty percent of the director positions on the board of directors will provide a more diverse governance structure for SCCP. If carefully selected, nonparticipant directors should bring diverse experience to the board and thus enable SCCP to better perform its self-regulatory obligations. In addition, the Commission believes that the changes SCCP is making in connection with its current restructured securities clearing business are being made in a manner that is consistent with SCCP's obligations under Section 17A of the Act.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow SCCP to institute reforms called for in the settlement of its administrative proceedings in an expedient fashion.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the File No. SR–SCCP–97–06 and should be submitted by February 27, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–97–06) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3011 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission has modified the text of the summaries prepared by SCCP.

[5] These changes: (a) require SCCP to call a special meeting of shareholders if the by-laws regarding composition of the board are to be amended, (b) limit the nominating committee to three persons selected by the chairman of the board, (c) allow the chairman, instead of the president, to call special meetings of shareholders and of the board, and (d) reduce the number of board committees to an audit committee, a finance committee, a nominating committee, and an operations committee.

[6] 15 U.S.C. 78q-1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the

current OMB approval(s) or are proposed new collection(s):

1. Request to have Supplemental Security Income Overpayment Withheld from My Social Security Benefits—0960–0549. The information on Form SSA–730–U2 is used by the Social Security Administration (SSA) to verify that a beneficiary has freely, voluntarily and knowingly requested that a Supplemental Security Income (SSI) overpayment be recovered from his or her Old-Age, Survivors and Disability Insurance benefits. The respondents are overpaid SSI beneficiaries who agree to have the overpayments withheld from their Social Security benefits.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 833 hours.

2. Farm Self-Employment Questionnaire—0960–0061. The information on Form SSA–7156 is used by SSA to determine whether an agricultural trade or business exists and to verify possible covered earnings for Social Security entitlement purposes. The respondents are claimants for benefits who allege covered earnings from agricultural self-employment.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 7,917 hours.

3. Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103. SSA uses Form SSA–7163A to collect needed information whenever a Social Security beneficiary or claimant reports work on a farm outside the U.S. The data are used for the purpose of making a determination of work deduction. The respondents are Social Security beneficiaries or claimants who are engaged in farming activities outside the U.S.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 1,000 hours.

4. Earnings Record Information—0960–0505. The information on Form SSA–L3231–C1 is used by SSA to ensure that the proper person is credited with earnings reported for a minor under age 7. The respondents are businesses reporting earnings for children under age 7.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

5. Employer Verification of Earnings After Death—0960–0472. The information on Form SSA-L4112 is used by SSA to determine whether wages reported by an employer are correct, when SSA records indicate that the wage earner is deceased. The respondents are employers who report wages for a deceased employee.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Disability Report-Child—0960–0504. Form SSA–3820–BK is used by the State Disability Determination Services to record claimants' allegations and sources of evidence in determining eligibility for children filing for SSI disability benefits. The respondents are SSI claimants who live in Virginia and are applying for disabled child's benefits.

Number of Respondents: 10,900.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 7,267 hours.

2. Application for Child's Insurance Benefits—0960–0010. The information collected on Form SSA–4–BK is used to entitle children of living and deceased workers to Social Security benefits. The respondents are children of living or deceased workers.

Number of Respondents: 1,740,000.

Frequency of Response: 1.

Average Burden Per Response: 10.5 or 15.5 minutes (depending on the type of claim).

Estimated Average Burden: 372,417 hours.

3. Notice Regarding Substitution of Party Upon Death of Claimant—0960–0288. The information collected on Form HA–539 is used to advise claimants of their statutory right to a hearing and of a decision by SSA on who, if anyone, should become a substitute party for the deceased, as provided for in the Social Security Act. The respondents are individuals requesting hearings on behalf of deceased claimants on Social Security benefits issues.

Number of Respondents: 35,451.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 2,954 hours.

4. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019. SSA uses the information collected on Form SSA–781 to decide if ''in care'' requirements are met by noncustodial parent(s) (or the spouse of a parent), who is filing for benefits based on having a child in care. The respondents are noncustodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 2,333 hours.

5. Pain Report—Child—0960–0540. The information collected on Form SSA–3371–BK is used by SSA to make a determination of disability for a child under the SSI program. This information is essential to the adjudication of a claim. The respondents are applicants for SSI child disability benefits.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 62,500 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB).

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: January 30, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–2905 Filed 2–5–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2719]

Delegation of Duties, Functions and Responsibilities Vested in the Assistant Secretary for the Bureau of Oceans and International Environmental and Scientific Affairs

1. General Delegation

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. Section 2651a), I hereby delegate the duties, functions and responsibilities now or hereafter vested in the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs to the Principal Deputy Assistant Secretary for Ocean and International Environmental and Scientific Affairs.

2. Technical Provisions

(a) Notwithstanding any provision of this delegation, the Secretary of State, or the Deputy Secretary of State, or an Under Secretary of State at any time may exercise any function delegated by this delegation.

(b) The duties, functions, and responsibilities delegated may be redelegated to another Deputy Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

(c) This delegation shall not include duties, functions, and responsibilities required by law to be exercised by higher authority than the delegate.

(d) This delegation does not repeal previous delegations to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

(e) This delegation shall terminate and cease to be effective upon the appointment of an Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs that takes place after the effective date of this delegation.

Dated: January 8, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–2961 Filed 2–5–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in FR 62 63214, November 26, 1997.

DATES: Comments must be submitted on or before March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Walter Lockland, Chief, Division of Operations Support, Office of Ship Operations, Maritime Administration, MAR–613, Room 2123, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5735 or fax (202) 366–3954. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration, DOT

Title: Position Reporting System for Vessels.

OMB Control Number: 2133–0025.

Form Number: CG–4796–A (MA) (Rev. 8–88).

Affected Public: U.S.-flag and U.S. citizen-owned vessels which are required to respond under current statute and regulation.

Abstract: This collection is used to gather information regarding the location of U.S.-flag and certain other U.S. citizen-owned vessels for the purpose of Search and Rescue in the saving of lives at sea; and for the marshaling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions electronically via radio message, and from this, location data is read into a database and is accessed only by the U.S. Coast Guard and MARAD to determine the location of a particular ship.

Need and Use of the Information: The collection is necessary for maintaining a current plot of U.S.-flag and U.S.-owned vessels in order to facilitate immediate marshaling of ships for national defense purposes, and for the purpose of maintaining a current plot for Search and Rescue purposes for safety of life at sea.

Annual Burden: 3,328 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

OMB is required to make a decision concerning this collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives within 30 days of publication.

Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

Issued in Washington, DC, on January 30, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–3084 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–67]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisi0ns governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's

awarness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 26, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Tawana Matthews, (202) 267–9783, or Angela Anderson, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC., on February 2, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29110

Petitioner: Era Aviation, Inc.

Sections of the FAR Affected: 14 CFR 121.356(b)

Description of Relief Sought: To permit the petitioner to operate its Douglas DC–3 aircraft under 14 CFR part 121 without those aircraft being equipped an approved Traffic Alert and Collison Avoidance System.

[FR Doc. 98–2999 Filed 2– 5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3454

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Burlington Northern and Santa Fe Railway seeks approval of the proposed reduction of the traffic control system limits, on Main Track No. 2, at North Tennessee Yard, near Memphis, Tennessee, on the Thayer Subdivision, Southeastern Division, consisting of the relocation of Signal 180R and the associated Begin and End CTC limits, from milepost 494.6 to milepost 492.9.

The reason given for the proposed changes is that the planned installation of a new run through track (Third Quarter 1998), will allow straight through movements for the majority of freight trains on Main Track No. 1, and will eliminate unnecessary delays for the switch engine assignments that works customers on Main Track No. 2 between North Tennessee Yard and milepost 492.9.

BS–AP–No. 3455

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on the two main tracks, mileposts' 566.7 and 566.8, near Laramie, Wyoming, Laramie Subdivision, consisting of the discontinuance and removal of Signal 566.7 on Track No. 1 and Signal 566.8 on Track No. 2.

The reason given for the proposed changes is that the signals are no longer required and train operations will be improved by the increased signal spacing.

BS–AP–No. 3456

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the Rock Street Industrial Lead track, Junction Bridge, milepost 345.0, near Little Rock, Arkansas.

The reason given for the proposed changes is to modernize the operation of the Junction Bridge.

BS–AP–No. 3457

Applicant: Southeastern Pennsylvania Transportation Authority, Mr. John LaForce, P.E., Deputy Chief Engineer, Operations, 1234 Market Street, Philadelphia, Pennsylvania 19107–3780.

The Southeastern Pennsylvania Transportation Authority (SEPTA) seeks approval of the proposed modification of Chestnut Hill West Interlocking, milepost 6.6, on the Chestnut Hill West Line, in Philadelphia County, Pennsylvania, consisting of the conversion of Chestnut Hill West Interlocking from manual control to automatic operation. The proposed conversion includes the retirement of the manually controlled electro-mechanical interlocking machine for directing train movements; installation of vital microprocessor technology and revision of interlocking control logic to provide for the automatic routing of train movements; installation of a local control panel for manual manipulation in a central instrument housing; and revision of interlocking control logic to provide for existing split point derails and respective home signals to be operated by push button panels, to be located adjacent to the engineer's cab of a train ready for departure from the Chestnut Hill West Terminal, on each respective track.

The reason given for the proposed changes is to retire obsolete facilities no longer required for present operation thereby reducing costs associated operating the system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on February 2, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–2980 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Mr. and Mrs. Scott Montreuil of Ramsey, Minnesota, submitted a petition dated October 1, 1997, requesting that an investigation be initiated to determine whether 1993 Chrysler Jeep Grand Cherokees contain a defect related to motor vehicle safety within the meaning of 49 U.S.C. Chapter 301. The petition alleges that 1993 Chrysler Jeep Grand Cherokees have a defective viscous coupling that could cause the steering to bind and lock up, and possibly affect the vehicle's braking.

Although not all Jeep Grand Cherokees utilize a viscous coupling, some 1993 through 1995 Jeep Grand Cherokees are equipped with a Quadra-Trac transfer case. An integral part of the Quadra-Trac transfer case is its viscous coupling, a speed-sensitive device that controls torque output between the front and rear drive shafts. The housing of the viscous coupling contains high viscosity silicone fluid and specially engineered metal plates splined alternately to an inner and outer drum. When there is a difference in front-to-rear axle speed, such as when the rear wheels slip, the resulting friction between the metal plates increases the temperature inside the unit. This causes the fluid to expand, building pressure that moves the plates together. This occurs almost instantaneously in two modes: the ''shear'' mode, when momentary speed differences occur such as in cornering or tight turns, causing the plates to move near each other, or the ''hump'' mode, when high-speed differences occur for a longer period of time, such as in deep snow or on off-road trails, causing the plates to lock and the front and rear drive shafts to turn at the same speed for maximum traction. As traction is gained, the fluid cools, and the plates separate.

When the viscous coupling fails, it may remain in one of the above two modes all the time, regardless of whether there is a difference between front-and-rear axle speed. If the coupling fails in the ''hump'' mode on dry pavement, it may cause vehicle hopping/bucking during turns, resulting in rapid wear of tires.

NHTSA drove a Jeep Grand Cherokee with a simulated failure of the viscous coupling in the ''hump'' mode on dry pavement at various speeds. Some hopping/bucking was experienced while the vehicle executed turns. However, no steering or braking problems were experienced at any time.

A review of agency data files, including information reported to the Auto Safety Hotline by consumers, indicated that, aside from the petition, there were no other reports concerning failure or malfunction of the viscous coupling in 1993 Jeep Grand Cherokees. There was a report pertaining to transmission lockup when the engine was started, but this was not related to a failure of the viscous coupling.

Chrysler Corporation has received 40 complaints concerning failure or malfunction of the viscous coupling in the transfer case of 1993 Jeep Grand Cherokees. Five of these complaints report handling problems, such as vehicle hopping during turns. The remaining 35 complaints are solely related to financial assistance issues. No crashes or injuries were reported.

The agency has analyzed available information concerning the problem alleged in the petition. Based on its understanding of viscous couplings, NHTSA believes that the failure or malfunction of the viscous coupling in the subject vehicles cannot cause lockup of the steering or adversely affect the brake system.

For the reasons presented above, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: January 26, 1998.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 98–2937 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3412; Notice 1]

DeTomaso Modena S.p.A.; Receipt of Application for Temporary Exemption From Three Federal Motor Vehicle Safety Standards

DeTomaso Modena S.p.A. of Modena, Italy (''DeTomaso'') has applied for a temporary exemption from portions of three Federal motor vehicle safety standards as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with each of the standards.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

DeTomaso is a small, independent Italian passenger car manufacturer which produced 15 vehicles between September 1, 1996, and September 1, 1997. The current car produced, and the one for which exemption is sought, is the Guara GT coupe. DeTomaso's ''sister'' corporation, DeTomaso Ponente Srl, was recently formed to launch the development and production of the Bigua coupe, intended as the successor to the Guara. The Bigua has been designed to conform to all applicable U.S. Federal motor vehicle safety standards. However, DeTomaso anticipates that it cannot begin production of the Bigua until 1999 ''given the significant investments required and the need for completion of outside financing.'' In the interim, it

needs to sell 50 Guaras in the next 12 months to have adequate cash-flow to prevent shut-down of its factory. Its cumulative net losses in the five-year period 1992–96 are slightly less than $7,625,000. Critical revenue can be generated by selling some Guaras in the American market. This will also afford an opportunity for DeTomaso to reintroduce its name in the United States after an absence of 20 years (its Pantera model was sold through Lincoln-Mercury dealers in the 1970s).

The Guara has received full type approval under EC law. However, at the time it was designed, 1993, DeTomaso did not intend to sell it in the American market and such a decision was not reached until the Summer of 1997 when it became apparent that reentry into the United States with the Guara was financially necessary in advance of introduction of the fully-complying Bigua. DeTomaso cites NHTSA's grant of a temporary exemption to Bugatti as an example of relief being provided a vehicle which also was not designed with the U.S. market in mind (59 FR 11649). Its review of the Federal motor vehicle safety standards has led it to conclude that the Guara can meet all but a portion of three of them: Standard No. 208 *Occupant Crash Protection* (the automatic restraint requirements of paragraph S4.1.5), Standard No. 214 *Side Impact Protection* (the dynamic side impact requirements of paragraph S3(b)), and Standard No. 301 *Fuel System Integrity* (the lateral moving barrier and roll-over portions of paragraphs S6.3 and S6.4). Accordingly, it requests a two-year exemption from them. A denial would force DeTomaso to cease production of the Guara because of insufficient demand outside the United States for it, and remain closed until the Bigua was ready for manufacture. However, ''a denial of the exemption request will create the grave risk that potential investors will refrain from consummating their investments and could thus jeopardize the entire existence of DeTomaso.'' The company believes that it has made a good faith effort for the Bigua to meet the Federal motor vehicle safety standards for which it is requesting exemption on behalf of the Guara.

The applicant believes that a temporary exemption would be in the public interest and consistent with traffic safety objectives for several reasons. The first is the low volume of exempted vehicles; it does not anticipate selling more than 50 Guaras in the United States over the next two years. The second is that the Guara will meet the requirements of S4.1 of Standard No. 208 with belted (3-point system) crash test dummies. This test will be piggy-backed with Standard No. 301's frontal impact test; the applicant informs NHTSA that it ''will modify its European design and fit reinforced structures on all exempted cars.'' It believes that ''this design should also provide significant benefit as regards side impact protection.'' DeTomaso argues that the mounting of the fuel tank in the central tubular chassis will reduce the risk of fuel system damage in the event of a crash. Finally, it will place a label on the dash advising occupants of the exemption and the need to wear their seat belts.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Central Docket Management Facility, room Pl-401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. Comments may also be viewed on the Internet at web site dms.dot.gov. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 9, 1998.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 2, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2997 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

January 26, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Services (IRS)

OMB Number: 1545–1565.

Notice Number: Notice 97–64.

Type of Review: Extension.

Title: Temporary Regulations to Be Issued Under Section (h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

Description: Notice 97–64 provides notice of forthcoming temporary regulations that will permit Regulation Investment Companies (RICs) and Real Estate Investment Trusts (REITs) to distribute multiple classes of capital gain dividends.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–2951 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 28, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to begin the survey described below in early February 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by February 2, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–002G.

Type of Review: Revision.

Title: Customer Satisfaction Survey System.

Description: This is a direct outgrowth of the mid-October 1997 Senate Finance committee hearings where the conduct of IRS employees was publicly called into question. Both majority and minority members of the committee pointed to State or current IRS functional surveys that solicit such customer feedback, and recommended that the IRS as a whole pursue a similar approach. This survey is designed to solicit responses from taxpayers, their representatives, and other appropriate customers shortly after their case is closed or at the conclusion of their interaction with an IRS employee. The functional areas within IRS included in this survey are: (1) Customer Service, (2) Collection, (3) Examination, (4) Appeals, and (5) Employee Plans and Exempt Organizations (EP/EO).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 1,784,619.

Estimated Burden Hours Per Response: 4 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 118,975 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–2952 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 26, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0092.

Form Number: ATF F 5100.31.

Type of Review: Revision.

Title: Application for Certification/ Exemption of Label/Bottle Approval under the Federal Alcohol Administration Act.

Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 8,624.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: Other (3 years).

Estimated Total Recordkeeping Burden: 28,565 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–2953 Filed 2–5–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Revised National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On February 6, 1997, a notice was published in the **Federal Register** announcing a Customs prototype test of reconciliation. A subsequent notice, published in the **Federal Register** on September 30, 1997, announced modifications to the originally planned test. In response to comments received pursuant to that notice and discussions with the trade community, Customs has made further enhancements to the reconciliation prototype. These enhancements include a blanket application option to entry-by-entry flagging and, for Reconciliations involving duties, taxes, or fees due, the option of filing aggregate data for the Reconciliation in lieu of entry-by-entry data. This document serves as a replacement for all previous notices for this prototype, which is known as the ACS Reconciliation Prototype. The changes to the prototype detailed herein do not affect the previously announced start date of October 1, 1998, nor do they affect the policy which makes this prototype the exclusive means to reconcile entries, pursuant to 19 U.S.C. 1484(b).

This document invites public comments concerning any aspect of the planned test, informs interested members of the public of the requirements for voluntary participation, and establishes the process for developing evaluation criteria. This document also serves to open the application period. Certain information, as outlined in this notice, must be filed in an application with Customs prior to an applicant being approved for participation. It is important to note that certain aspects of this prototype may be modified prior to implementation of the final reconciliation program.

EFFECTIVE DATES: The testing period of this prototype will commence no earlier than October 1, 1998, will run for approximately two years, and may be extended. The prototype will be limited to consumption entries filed on or after October 1, 1998, through September 30, 2000. Comments concerning this notice and applications to participate in the prototype are requested by March 31, 1998.

ADDRESSES: Written comments regarding this notice and/or applications to participate in this prototype should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave, NW, Room 5.2A, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McCann, at (202) 927–1106, or Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub.L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 637 of the Act amended Section 484 of the Tariff Act of 1930 to establish a new subsection (b), entitled ''Reconciliation'', a planned component of the NCAP. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See,* TD 95–21. This test is established pursuant to those regulations. This document replaces earlier notices concerning the reconciliation prototype test, published in the **Federal Register** on February 6, 1997 (62 FR 5673), announcing the initial Customs prototype test of reconciliation, and on September 30, 1997 (62 FR 51181), modifying the initial prototype).

The Concept of Reconciliation

When certain information (other than that related to the admissibility of merchandise) is not determinable at the time of entry summary, an importer may later provide Customs with that information on a Reconciliation. A Reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest. Upon liquidation of any underlying entry summary, any decision by Customs entering into that liquidation, *e.g.,* classification, may be protested pursuant to 19 U.S.C. 1514. When the outstanding issue, *e.g.,* value as determined by the actual costs, is later furnished in the Reconciliation, the Reconciliation will be liquidated. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for reconciliation (*i.e.,* the protest may not re-visit issues previously liquidated on the underlying entry summary).

Importers must be aware of the distinction between prior disclosure and reconciliation. A prior disclosure exists when a person concerned discloses the circumstances of a violation pursuant to the Customs Regulations. The person disclosing this information must do so before, or without knowledge of, the commencement of a formal investigation of that violation. Reconciliation is the process by which an importer notifies Customs of undeterminable information, and by which the outstanding information is provided to Customs at a later date. Under reconciliation, the importer is not disclosing a violation, but rather identifying information which is undeterminable and will be provided at a later time.

Definitions

1. *Reconciliation:* The process which allows an importer to identify undeterminable information (other than that affecting admissibility) to Customs, and provide the outstanding information at a later date. Reconciliation also refers to the entry on which the outstanding information is provided.

2. *Underlying Entry Summary:* A consumption entry summary flagged for reconciliation.

3. *Flagging an entry for reconciliation:* Identifying to Customs that an entry summary is subject to reconciliation for a defined issue(s). There are two ways an importer can flag an entry summary for reconciliation:

a. *Entry-by-entry flagging:* The importer electronically via ABI inputs an indicator on all entries which are subject to reconciliation. This indicator identifies the issue(s) subject to reconciliation.

b. *Blanket application:* Prior to filing entries subject to reconciliation, the importer provides Customs a letter which contains the importer of record number, the time period in which entries are subject to reconciliation, and the issue(s) subject to reconciliation. Customs will input an electronic indicator on ALL entries for that importer for that time period, which will identify them as being subject to reconciliation for the issue(s) indicated.

4. *Entry-By-Entry Reconciliation:* A Reconciliation in which the revenue adjustment is specifically provided for each affected entry summary.

5. *Aggregate Reconciliation:* A Reconciliation filed with summarized data showing reconciled adjustments at an aggregate level. A list of the affected entries is required, but the revenue change need not be broken out according to individual underlying entries. Aggregate Reconciliations may be used only where all adjustments covered by the Reconciliation result in absolute increases in duties, taxes, and fees. Drawback is not available on the increased/reconciled adjustment.

6. *Absolute increase:* Each and every underlying entry summary covered by the Reconciliation results in an increase or no change in duties, taxes, and fees. Only absolute increases are eligible for Aggregate Reconciliations.

Examples: Where entries A and B are both covered by a Reconciliation, the Reconciliation would have an Absolute Increase if the changes to both entries would be increases or no changes. If A increased and B decreased, even if A's increase is greater than B's decrease, this is NOT an Absolute Increase. See Netting, below.

Note: This principle applies at the entry level rather than at the line level. That is, regardless of decreases on individual *lines* on entry A, as long as the total change for entry A resulted in an increase in duties, taxes, and fees, it could be considered part of an Absolute Increase.

7. *Netting:* Situations in which increases AND decreases resulted at the end of the reconciliation period. In any netting situation, the importer has the following options:

a. File an Entry-By-Entry Reconciliation to account for both the increases and decreases, or

b. Divide the Reconciliation into two pieces: An Aggregate Reconciliation for the increase and an Entry-By-Entry Reconciliation for the decrease.

Description of the ACS Reconciliation Prototype

Customs goals in the design of this prototype are to (1) make progress under this key component of the Mod Act, (2) establish uniformity in an area which has traditionally operated under a variety of procedures, (3) provide financial safeguards, and (4) institute a legal mechanism for reconciling entries.

A. Exclusive Means

Concurrent with this Automated Commercial System (ACS) Reconciliation Prototype, Customs is designing a reconciliation component under the National Customs Automation Program Prototype (NCAP/P) in the Automated Commercial Environment (*see,* 62 FR 14731, dated March 27, 1997).

Thus, except for participation in the NCAP/P and upon implementation of this prototype, any party who elects to reconcile entries pursuant to 19 U.S.C. 1484(b) may only do so through this prototype. This prototype will serve as

the exclusive means to reconcile entries for (1) value, 2) classification on a limited basis, (3) merchandise entered under Harmonized Tariff Schedule of the United States (HTSUS) heading 9802, and/or (4) merchandise entered under the North American Free Trade Agreement (NAFTA). All practices with respect to block liquidation/block appraisement (liquidating one entry summary or some entry summaries with a periodic adjustment affecting many entry summaries) will cease and such post-entry adjustments will only take place via the ACS Reconciliation Prototype. All importers may apply for this prototype. Details on the application process are explained below. Outside of reconciliation, the only alternative post-entry adjustment will be to file a Supplemental Information Letter for each affected entry summary, with appropriate corrective data and duty tenders. (For information on the Supplemental Information Letter, see Automated Broker Interface (ABI) administrative message #97–0727, posted on 8/4/97, entitled ''314 Day Liq Cycle—Trade Notice.'') As always, importers retain the right to request extension of liquidation of entry summaries, as described in 19 CFR 159.12(a)(ii).

B. Notice of Intent

A notice of intention to file a Reconciliation (''Notice of Intent'') identifies an undeterminable issue, transfers liability for that issue to a Reconciliation and permits the liquidation of the underlying entry summary as to all issues other than those which are transferred to the Reconciliation. By providing a Notice of Intent, an importer is requesting that a certain issue or group of issues be separated from the entry summary. The importer voluntarily requests and accepts that the issue(s) identified in the Notice of Intent remain open and outstanding. The importer remains responsible for filing a Reconciliation, and liable for any duties, taxes, and fees resulting from the filing and/or liquidation of the Reconciliation. The Notice of Intent creates an obligation on the importer to file the Reconciliation. Importers participating in this prototype will recognize that the liquidation of the underlying entries pertains only to those issues not identified by the importer on the Notice of Intent.

The underlying entries flagged for a Reconciliation may be filed at any port, including any combination of ports. The following entries types are eligible for reconciliation under this prototype:

1. Entry type 01: Free and dutiable formal consumption entries;

2. Entry type 02*: Quota/visa consumption entries;

3. Entry type 03*: Antidumping/Countervailing duty (AD/CVD) consumption entries;

4. Entry type 06: Foreign Trade Zone consumption entries; and

5. Entry type 07*: Quota/visa and AD/CVD combination consumption entries.

* Quota and AD/CVD entries may not be reconciled for classification; they may only be reconciled for HTSUS heading 9802, value and/or NAFTA. The issues of AD/CVD final rate and scope determination, quota category or any admissibility issue are likewise not eligible reconciliation issues under this prototype.

(1) Option: Entry-by-Entry Flag

During this prototype, the importer may ''flag'' the underlying entries at time of filing via an ABI indicator, which will serve as the Notice of Intent.

(2) Option: Blanket Application Flag

Those importers who find that a large majority of their entry summaries require flagging may provide their Notice of Intent by filing a ''blanket application'' in lieu of entry-by-entry flags. The blanket application will consist of written notice by the importer showing the Importer of Record number, range of dates in which the underlying entry summaries will be subject to reconciliation, and a list of the issues subject to reconciliation. This application must be received by Customs no later than seven working days prior to transmission of the first entry subject to the Reconciliation. Upon receipt of the blanket application, Customs will automatically apply the above-mentioned electronic flag to all entry summaries filed by the importer during the specified time period.

C. Issues To Be Reconciled

The ACS Reconciliation Prototype will allow the following issues to be flagged for reconciliation: value, HTSUS heading 9802, NAFTA, and classification on a limited basis.

1. Value—The ACS Reconciliation Prototype is open to reconciliation of all value issues.

2. HTSUS heading 9802—The issue of 9802 includes only the value aspect involved with this HTSUS provision, *e.g.*, reconciling the estimated to actual costs.

3. NAFTA—Reconciliation may be used as a vehicle to file post-importation refund claims under 19 U.S.C. 1520(d). NAFTA Reconciliations are subject to the obligations of 19 CFR part 181, subpart D. The importer must possess a valid Certificate of Origin at the time of making a NAFTA claim. Presentation of the NAFTA Certificate of Origin to Customs is waived for the purposes of this prototype, but the filer must retain this document, which shall be provided to Customs upon request. The Certificate of Origin is part of the a1A list (19 U.S.C. 1508(a)(1)(A)), and covered by the recordkeeping provisions of the Customs laws. Filers are reminded that interest shall accrue from the date on which the claim for NAFTA eligibility is made (the date of the NAFTA Reconciliation) to the date of liquidation or reliquidation of the Reconciliation. The obligation to file a Reconciliation opened by the Notice of Intent applies to all Reconciliations, including NAFTA, even if the participant finally concludes it cannot file a valid 520(d) claim, in which instance the NAFTA Reconciliation would be filed with no change.

4. Classification—Classification issues will be eligible for reconciliation only when such issues have been formally established as the subject of a pending administrative ruling (including preclassification rulings), protest, or court action.

Reconciliation for classification issues other than those listed above is not permitted. Reconciliation for quantity is also not permitted. These issues are very closely linked to admissibility, and therefore are not eligible for reconciliation. Post-entry adjustments for these issues may still be made however, using the Supplemental Information Letter process. (For information on this process, see ABI administrative message #97–0727, 8/4/97.)

D. Reconciliation—Menu Approach

By this notice, Customs is offering a variety of choices in reconciliation to meet a variety of business needs. Importers may find it helpful to view these alternatives as a ''menu'' approach. It should be noted that the following menu choices are for the type of Reconciliation filed. They are not conditioned on the method of flagging used. In other words, an importer can flag entries either individually or via a blanket application, and reconcile those entries via an Aggregate or Entry-By-Entry Reconciliation.

1. Entry-by-Entry Reconciliation

a. This option can be used for all reconciliation adjustments, including refunds of duties, taxes, and fees.

b. The continuous bond on the underlying entries will be used to cover the Reconciliation.

c. Customs will accept no drawback claims on the underlying entries until

the Reconciliation is filed with duties, taxes, and fees deposited.

d. The revenue adjustment will be broken down to entry-by-entry detail for all underlying entry summaries.

e. After the Reconciliation has been filed, drawback may be claimed against the underlying entries and, if appropriate, the reconciled increase.

f. Reconciliation of any issue which covers Antidumping and/or Countervailing duty entries must be submitted as an Entry-By-Entry Reconciliation.

2. Aggregate Reconciliation

a. This option applies only to those situations which involve an absolute increase, *i.e.,* each and every entry covered by the Reconciliation results in an increase or no change in duties, taxes, and fees. If netting is involved to reach a net increase, this option does *not* apply. (See Definitions section of this notice for more details.)

For example, entry 123 covers product A. Entry 234 covers product B. An assist was provided for product A, which resulted in an increase in duty. The value of product B was affected by currency fluctuations, which resulted in a decrease in duty. An Aggregate Reconciliation cannot be filed to cover both entry 123 and entry 234. Remember, this restriction against netting applies only to netting between different entries. If entry 456 covers both products A and B, as long as entry 456 as a whole had an increase in duties, taxes and fees, it may be included in an Aggregate Reconciliation.

b. The continuous bond on the underlying entries will be used to cover the Reconciliation.

c. Customs will accept no drawback claims on the underlying entries until the Reconciliation is filed with duties, taxes, and fees deposited.

d. The Reconciliation will include a list of all underlying entries, but will not require the revenue adjustment to be broken down by entry.

e. After the Reconciliation has been filed, drawback may be claimed against the underlying entries, but may NOT be claimed against the reconciled increase. All parties are hereby notified that no drawback refunds will be issued on the reconciled adjustment, *e.g.,* if the duty paid on the underlying entry summary is $10,000, and the overall reconciliation increase adjustment is $1,000, the $10,000 is eligible for a drawback refund. The $1,000 is not eligible for a drawback refund. By opting to file an Aggregate Reconciliation, all participants understand that they waive their ability to claim drawback or transfer drawback rights for the amount of the reconciled increase.

E. Filing of Reconciliation—Grouping, Timeliness and Location

Reconciliation is to be used to group entries together for a common, outstanding issue. Entries flagged for reconciliation which have the same outstanding information should all be grouped on one Reconciliation, *e.g.,* entries flagged for reconciliation awaiting finalization of assist information should be grouped on one Reconciliation where the assist information is provided.

A Reconciliation of value, HTSUS heading 9802 and/or classification shall be filed within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. A Reconciliation may cover any combination of value, HTSUS heading 9802 and classification issues. Should the issues of value, HTSUS heading 9802 and/or classification on one entry summary be flagged for reconciliation, the participant shall address all those issues on the same Reconciliation.

A NAFTA Reconciliation must be filed within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation. NAFTA Reconciliations may not be combined with other issues, because of NAFTA's unique nature and different due dates, and so that Customs may expedite the processing of such refunds.

One underlying entry summary may have up to two Reconciliations, one for any combination of classification, HTSUS heading 9802 and/or value, and one for NAFTA.

A Reconciliation which is not filed by the appropriate deadline will be handled as a liquidated damages claim for failure to file.

The Reconciliation and supporting documentation may be filed at any port location. Certain ports will be established as reconciliation processing ports. The ABI transmission of the Reconciliation must reflect the appropriate Customs-identified processing port, and respective commodity team, on the header record. Customs will notify participants of the appropriate processing ports and commodity teams.

Please note that entries filed in Puerto Rico or the Virgin Islands must be reconciled on separate Reconciliations. Reconciliations cannot combine underlying entries filed in Puerto Rico with underlying entries filed at any other port, or entries filed in the Virgin Islands with entries filed at any other port. This limitation is due to the fact that revenue deposited on or refunded from entries filed in the Virgin Islands and Puerto Rico are attributed to separate accounts for those territories than entries filed at other ports.

F. Effect of Reconciliation on Drawback

Inherent in the concept of reconciliation is the fact that, because certain issues are kept open pending filing of the Reconciliation, the information regarding these issues and the resulting liability for the duties, taxes, and fees previously asserted by the importer may change when the Reconciliation is filed. Customs will therefore not accept drawback claims or certificates on underlying entries flagged for reconciliation until the Reconciliation is filed with all duties, taxes, and fees deposited. In the case of a drawback claim and a reconciliation refund against the same underlying entries, the importer is responsible for ensuring that a claim for a refund in excess of the duties paid is not filed with Customs and for substantiating how the drawback and reconciliation refund requests apply to different merchandise.

Since drawback is paid on a per-entry basis, reconciled adjustments filed with aggregate data are not eligible for drawback. As the adjustment made pursuant to an Aggregate Reconciliation is not connected to specific entry summaries, it would be impossible for Customs to ensure that those duties were indeed entitled to drawback, and/or that the duty for which the drawback was claimed had not been previously refunded on the underlying entry summary(ies).

G. Filing of Reconciliation—Bond Issues

Entry summaries flagged for reconciliation will require a continuous bond, which must be accompanied by a rider. The rider shall read as follows:

By this rider to the Customs Form 301, No., _____
executed on, _____
by, _____
as principal, importer No., _____
and, _____
as surety , code No., _____
which is effective on, _____
the principal and surety agree that this bond covers all Reconciliations pursuant to 19 U.S.C. 1484(b) that are elected on any entries secured by this bond, and that all conditions set out in Section 113.62, Customs Regulations, are applicable thereto.

The continuous bond obligated on the underlying entries, along with the rider, will be used to cover the Reconciliation. Adequate bond coverage must exist for the Reconciliation.

All underlying entries subject to one Reconciliation must be covered by one surety and one continuous bond. Each Reconciliation must be covered by one surety, *i.e.*, two sureties cannot cover the same Reconciliation. Termination of the continuous bond, either by Customs, the bond principal or surety will result in the closing of the Reconciliation to the addition of further underlying entries.

H. ACS Reconciliation Prototype—Chain of Events

1. Initial Application

As part of an importer's application to participate in the ACS Reconciliation Prototype, the importer will provide information including descriptions of the specific issues to be reconciled, the merchandise and corresponding Harmonized Tariff Schedule (HTS) classification, and which ports the importer uses or intends to use. Customs will notify the applicant in writing of their acceptance or denial into the prototype. (See ''Application to Participate in ACS Reconciliation Prototype'' below.)

2. Entries flagged for Reconciliation

a. Any entry summary that is flagged for reconciliation must be filed via ABI. An electronic indicator, or ''flag'', signifying that these entries are to be reconciled, will be applied at the header level. The flag designates that the indicated issue(s) for the entire entry summary (not just a specific line) is subject to reconciliation.

b. As mentioned above, there is also a ''blanket application'' option, in which ACS will automatically set the flag for all of an importer's entries for a given period for a given issue(s). The same responsibilities and liabilities apply to these entries as those flagged individually.

c. For purposes of this prototype, the ''flag'' (set either by the filer or by Customs in accordance with a blanket application) serves as the importer's Notice of Intent to file a Reconciliation.

d. The importer must use reasonable care in filing the entry summary, including but not limited to declaring the proper value, classification, and rate of duty on the underlying entry summary, regardless of whether a particular issue has been flagged for reconciliation. For example, if the entry is subject to value reconciliation, the importer must still use reasonable care in providing a good faith value estimate, and deposit the appropriate duties, taxes, and fees at time of entry summary.

e. Entry summaries may be flagged for reconciliation until the close of the test period.

3. Liquidation of Underlying Entry Summaries

Liquidation of the underlying entry summary will occur as with any entry summary and will be posted to the Bulletin Notice of Liquidation. Importers who participate in this prototype will recognize that the liquidation of the underlying entry summary pertains only to those issues not identified by the importer as subject to reconciliation. Upon liquidation of the underlying entries, any decisions of the Customs Service entering into that liquidation can be protested pursuant to 19 U.S.C. 1514. It should be noted that liquidation of the underlying entry summaries can, but does not necessarily, precede the filing of the Reconciliation.

4. Importer Electronically Transmits the Reconciliation via ABI

a. When the importer has finalized the outstanding information, and has the answer to the issue in question, the filer, using reasonable care, will electronically (via ABI) transmit the Reconciliation to Customs. The Reconciliation will be a new entry type 09.

b. Transmission of a Reconciliation for value, HTSUS heading 9802, and/or classification must occur within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. Transmission of a NAFTA Reconciliation must occur within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation.

c. Each Reconciliation will be limited to one importer of record, *i.e.*, the underlying entries and the Reconciliation must have the same importer of record.

d. This prototype will allow up to 9,999 underlying entries per Reconciliation.

e. The importer must clearly document how the information in the Reconciliation was derived. The importer must maintain all supporting documentation required to substantiate the declaration made via the Reconciliation, and provide this information to Customs or Census upon request. Supporting documents may include, but are not limited to:

i. CF 247—Cost Submission;

ii. Detailed line-level spreadsheets;

iii. Landed cost analysis sheets;

iv. Invoices, purchase orders, and contracts; and

v. Documents supporting apportionment of assists in accordance with 19 CFR 152.103(e).

The recordkeeping provisions of the Customs laws apply to the Reconciliation and all supporting documentation as described above.

f. While entry summaries may be flagged until the close of the test period, Reconciliations may be filed and liquidated after the closing date of the test.

g. For both the entry-by-entry and aggregate methods of reconciliation, the structure of the Reconciliation will include a header, association file, and line item data. Where there are differences in the type of Reconciliation, they are noted below. Upon request, Customs will provide applicants and other interested parties with sample Reconciliations of each type. Customs will provide participants with instructions for reconciliation programming. Importers are encouraged not to begin programming until that time.

i. Header—The Reconciliation header will include the following data elements:

(a) Reconciliation entry number;

(b) Port of entry code (= processing port);

(c) Responsible commodity team;

(d) Reconciliation type (Entry-By-Entry or Aggregate);

(e) Reconciliation date (date of filing);

(f) Issue(s) being reconciled;

(g) IRS number;

(h) Surety code;

(i) Summary date of oldest underlying entry summary (if the reconciliation issue is value, HTSUS heading 9802 or classification);

(j) Date of import of oldest underlying entry (if the reconciliation issue is NAFTA);

(k) The total of the original duties, taxes, and fees (fees broken out by ''class code'') which were deposited on the underlying entries;

(l) The total of the reconciled duties, taxes, and fees (fees broken out by ''class code'');

(m) The total amount of interest deposited on filing of the Reconciliation. Please note: Customs is in the process of analyzing business-realistic options for interest calculation which are revenue-neutral and do not link to every underlying entry. A subsequent **Federal Register** notice will be published with any options for interest calculation. Until such further notice, interest must be calculated in accordance with 19 U.S.C. 1505; and

(n) Comment field: This field is to be used to explain any details of the Reconciliation, *e.g.*, assist declaration

on part XYZ for the period 10/1/1998 –9/30/1999.

ii. Association file—For both Entry-By-Entry and Aggregate Reconciliations, the association file will contain:

(a) The underlying entry numbers, and ports of entry, which were previously flagged and grouped on the Reconciliation.

For Entry-By-Entry Reconciliations only, the following elements are also required:

(b) The actual amount of duties, taxes and fees (fees broken out by ''class code'') deposited per underlying entry summary;

(c) The reconciled amount of duties, taxes, and fees (fees broken out by ''class code'') which should have been paid for each of the underlying entries had the complete information been available to the importer at the time of filing the underlying entry summaries; and

(d) If the Reconciliation results in additional duties or fees due Customs, the filer must deposit interest at time of filing the Reconciliation. Interest must be calculated in accordance with 19 U.S.C. 1505.

iii. Line item data—The line item data for both the Entry-By-Entry and Aggregate Reconciliations will NOT be filed via ABI. For both types of Reconciliation, this data will be submitted both in hard copy and in commercial spreadsheet format via diskette. The data elements shown below will be required for this portion of all Reconciliations. Each reconciliation line item will be consolidated for all of the underlying entries listed in the association file. Each combination of HTSUS, country of origin, Special Program Indicator (SPI) and calendar year of release will require a separate line. This line item data shall be presented in the format shown in the sample spreadsheet below:

BILLING CODE 4820–02–P

DURANT MOTOR CORP. -- AGGREGATE RECONCILIATION
PERIOD: 10/1/1999 THRU 3/31/2000

Rec.Line	Cal.Year	Reason	Port	Origin	Original SPI	Rec. SPI	HTS	Original Quantity	Rec. Quantity	Original Value	Reconciled Value	Additional Value	Original Duty	Rec. Duty	Duty Change*
1	1999	Royalty		JP			4011101000			$16,300,451	$16,544,958	$244,507	4.00%	4.00%	$9,780.28
2	2000	Royalty		JP			4011101000			$5,751,916	$5,838,195	$86,279	4.00%	4.00%	$3,451.16
3	1999	Assist		MX	MX	MX	5704900090			$685,231	$721,548	$36,317	2.60%	2.60%	$944.24
4	2000	Assist		MX	MX	MX	5704900090			$623,966	$657,036	$33,070	2.60%	2.60%	$859.82
5	1999	R&D		KR			7007110010			$3,201,101	$4,601,298	$1,400,197	5.60%	5.60%	$78,411.03
6	2000	R&D		KR			7007110010			$2,604,538	$3,015,562	$411,024	5.60%	5.60%	$23,017.34
7	1999	9802	All	US			9802008065			$7,801,810	$6,943,611	($858,199)	0.00%	0.00%	$0.00
7a	1999	9802	All	DE			8421394000			$4,001,201	$4,859,400	$858,199	0.80%	0.80%	$6,865.59
8a	2000	9802	All	US			9802008065			$6,537,984	$5,818,806	($719,178)	0.00%	0.00%	$0.00
8b	2000	9802	All	DE			8421394000			$3,549,751	$4,269,469	$719,718	0.80%	0.80%	$5,757.74
9	1999	Assist		EG	A	A	8804000000			$961,000	$1,037,880	$76,880	0.00%	0.00%	$0.00
10	2000	Assist		EG	A	A	8804000000			$63,250	$68,310	$5,060	0.00%	0.00%	$0.00
11a	1999	Class.	46	JP			4011105000	10000	2000	$160,000	$32,000	($128,000)	3.60%	3.60%	($4,608.00)
11b	1999	Class.	46	JP			4011101000	0	8000	$0	$128,000	$128,000	4.00%	4.00%	$5,120.00
														TOTAL ADJUSTMENT	$129,087.21

*** Duties, Taxes & Fees must be individually broken out for each Rec. line.**

BILLING CODE 4820–02–C

(a) The Bureau of the Census has certain requirements for specific reconcilable issues:

(i) *Classification:* Reconciliations for classification must include the data elements of quantity and port(s). (The port(s) may be reported at the first two digit level, *e.g.*, Port 4601 = 46.) If ''ALL'' is indicated in the ''Port'' column, Census will understand that the change provided by that line applies to all ports in which the importer entered the subject merchandise.

A Reconciliation of a classification change requires that the summarized data lines must be connected to illustrate the shift from one HTS classification to another. In the spreadsheet which appears above, an example is included in which a ruling determined that a portion of the merchandise entered under HTSUS subheading 4011.10.5000 should have been classified under HTSUS subheading 4011.10.1000 (lines 11a and 11b of the spreadsheet). The data

provided in the Reconciliation must show Customs and Census which portion shifted from the original HTS classification to the reconciled HTS classification, and which portion did not change.

The classification change illustrated in lines 11a and 11b of the spreadsheet resulted in an increase in duties due Customs, *i.e.*, the portion of the merchandise that changed classification went from a 3.6% to a 4% duty rate. This example could be filed as an Entry-by-Entry or Aggregate Reconciliation. Remember: should the classification change result in a decrease in duties, taxes, and fees, the Reconciliation must be filed as an Entry-By-Entry Reconciliation.

(ii) *HTSUS heading 9802:* Similar to classification, a Reconciliation of HTSUS heading 9802 must also provide the port(s) covered (port(s) at the first two digits), and a link between the original data submitted and the reconciled data. Census needs to be able to capture the shift in value, in order to know how to adjust the statistics for both the HTSUS Chapter 1–97 provision and for the HTSUS heading 9802 provision. An example of a 9802 change is also provided in the spreadsheet above.

Should the HTSUS heading 9802 change result in a decrease in duties, taxes, and fees, the Reconciliation must be filed as an Entry-By-Entry Reconciliation.

h. Payment—If the Reconciliation results in a revenue change, Customs will issue one bill or refund per Reconciliation. If the Reconciliation results in additional duties, taxes, or fees due Customs, payment must be made via check or Automated Clearing House at the time of filing the Reconciliation. In such cases, the filer must deposit interest at time of Reconciliation filing. If the Reconciliation results in a refund due the importer, Customs will issue the refund within 30 days of liquidation of the Reconciliation. Final interest will be assessed or refunded as appropriate pursuant to 19 U.S.C. 1505.

i. Liquidation of Reconciliation—

i. The Reconciliation will be reviewed and liquidated, and one bill or refund issued if a revenue change is appropriate. Importers will recognize that there may be instances where no bill or refund is necessary. Interest will be calculated in accordance with 19 U.S.C. 1505. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation.

ii. On a matter of dispute, the importer may follow normal protest procedures (pursuant to 19 U.S.C. 1514) with regard to any decision pertaining to the liquidation of the Reconciliation.

Eligibility Criteria

1. Participants must be capable of filing the underlying entry summary and Reconciliation information electronically, via ABI.

2. Adequate bond coverage must exist for the Reconciliation. Participants must have on file a rider and a continuous bond, which will be obligated on the underlying entries and used to cover the Reconciliation.

Reasonable Care and Recordkeeping

Under the statutory mandate of 19 U.S.C. 1484, the importer is responsible for using reasonable care in declaring at entry, among other things, the proper value, classification and rate of duty applicable to imported merchandise. The public is reminded that the obligation to use reasonable care applies to all aspects of this prototype, including the filing and flagging of the underlying entries and the filing of the Reconciliation.

Auditable and verifiable financial records must be the basis for any Reconciliation. Accordingly, the importer is required to maintain all records to support the Reconciliation, whether an Entry-By-Entry or Aggregate Reconciliation, pursuant to Customs recordkeeping laws, and maintain a system of records providing an audit trail between the data provided in the Reconciliation and the importer's books and records.

Upon request by Customs and/or Census, further information in support of the Reconciliation must be provided by the importer. For example, Customs may, for verification purposes, request that the importer break down a certain (HTSUS/country of origin) line by part number, contract number, etc., and provide the documentation to support the change made at that level. The importer will have to track the adjustment to entry if requested by Customs. Census may in certain circumstances request that the yearly change for a given [HTSUS/country of origin/SPI] be broken down to quarterly adjustments, in order to capture seasonal fluctuations.

Application To Participate in the ACS Reconciliation Prototype

This prototype is open to all importers. As stated above, this prototype will serve as the exclusive means to reconcile entries, outside of any other Customs-designated prototypes. This notice requests importers to apply for participation in this prototype by submitting the following information:

1. Importer name and IRS number;
2. Broker name(s) and filer code(s);
3. Surety name(s) and surety code(s);
4. Bond coverage (reconciliation rider mentioned above); A copy of the rider and identification of the port in which the continuous bond and rider are filed must be included in the application.
5. Commodities (description and HTS no.)covered under the Reconciliation;
6. Port(s) at which underlying entries and Reconciliation will be filed;
7. Port location from where ABI transmission will be sent (may be same as #6);
8. Number of entries anticipated to be covered by the Reconciliation;
9. Detailed description of specific issue(s) to be reconciled; and
10. Point of contact and telephone number.

The application may be submitted by the importer's broker and/or attorney, if duly authorized. This information should be submitted by March 31, 1998 to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave, NW, Room 5.2A, Washington, DC 20229–0001. By applying to participate in this test, the importer is agreeing to participate pursuant to the terms of the test as defined in this notice.

Applications may be submitted until the start of the prototype and throughout the duration of the prototype. Priority review will be given to applications received by March 31, 1998. Applicants will be notified in writing of their acceptance or denial into the prototype. Applicants are reminded that they cannot begin participation in the prototype until they have received acceptance from Customs. An applicant who has been denied participation in the prototype may re-apply after 30 days of the notice of denial. An applicant may appeal a denial within 30 days of the notice of denial to the Director, Trade Compliance.

Interested candidates should note that participation in this test will not constitute confidential information, and that lists of participants will be made available. All laws and regulations concerning commercial confidential information apply.

Misconduct Under Prototype

If a filer attempts to submit data relating to prohibited merchandise, abuses reconciliation by using it when the reconciliation issue is not truly undeterminable at time of entry summary; fails to exercise reasonable care in filing underlying entries or

Reconciliations; fails to abide by the terms and conditions of this notice; submits entry types not authorized for reconciliation; is consistently late in filing the Reconciliation or depositing duties, taxes, and fees; fails to supply Customs with sufficient supporting documentation for the Reconciliation; is habitually delinquent in the payment of bills from Customs; or otherwise fails to follow the applicable laws and regulations, then the participant may be suspended from the prototype, subject to liquidated damages, penalties, and/or other administrative sanctions, and/or prevented from participation in future prototypes. Any action commenced by Customs for misconduct may be appealed through existing procedures or, if none exist, to the Director, Trade Compliance, within 30 days of the action.

Regulatory Provisions Suspended

Certain requirements of § 113.62 of the Customs Regulations (19 CFR 113.62), pertaining to basic importation and entry bond conditions, will be suspended during this prototype. Certain provisions in Parts 141 and 142 of the Customs Regulations (19 CFR 141 and 19 CFR 142), pertaining to entry, in Part 159 of the Customs Regulations (19 CFR Part 159), pertaining to liquidation of duties, and in Part 181 of the Customs Regulations (19 CFR 181), pertaining to the North American Free Trade Agreement, will also be suspended during this prototype.

Absent any specified alternate procedure, the current regulations apply.

Test Evaluation Criteria

Participants are strongly encouraged to participate in the evaluation of the ACS Reconciliation Prototype. Interim evaluations of the prototype will be published on the Customs Electronic Bulletin Board, and the results of the final prototype evaluation will be published in the **Federal Register** as required by 19 CFR 101.9(b). The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis and questionnaires;
2. Reports to be run through use of data analysis throughout the prototype; and
3. Questionnaires from both trade participants and Customs to be used before, during and after the prototype period.

Customs may assess any or all of the following evaluation criteria from both Customs and the trade participants:

1. Workload impact (workload shifts/volume, cycle times, etc.);
2. Cost savings (staff, interest, issuance of fewer checks or bills, tracking refunds/bills, reduction in contingent liabilities, etc.);
3. Policy and procedure accommodation;
4. Trade compliance impact;
5. Problem resolution;
6. System efficiency;
7. Operational efficiency;
8. Statistical needs; and
9. Other issues identified by the participant group. Customs will request that test participants be active in the evaluation, identifying costs and savings experienced in this prototype.

Dated: February 3, 1998.

Audrey Adams,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–3069 Filed 2–5–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

DATES: Written comments should be received on or before April 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

OMB Number: 1545–1589.

Revenue Procedure Number: Revenue Procedure 98–19.

Abstract: Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, not-for-profit institutions, and farms.

Estimated Number of Organizations: 15,000.

Estimated Average Time Per Organizations: 10 hours.

Estimated Total Annual Recordkeeping Hours: 150,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3080 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–24–95 and CO–11–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO–24–95 (TD 8660), Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91 (TD 8597), Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules (§ 1.1502–13).

DATES: Written comments should be received on or before April 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: CO–24–95, Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91, Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules.

OMB Number: 1545–1433.

Regulation Project Numbers: CO–11–91 and CO–24–95.

Abstract: The regulations require common parents that make elections under regulation section 1.1502–13 to provide certain information. The information will be used to identify and assure that the amount, location, timing and attributes of intercompany transactions and corresponding items are properly maintained.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,200.

Estimated Time Per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 1,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3081 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Approved Motor Fuel Distribution Terminals

AGENCY: Internal Revenue Service

ACTION: Notice of Issuance of Terminal Control Numbers for Approved Motor Fuel Terminals

SUMMARY: Internal Revenue Service (IRS) developed and is publishing in this issue of the Federal Register, Terminal Control Numbers (TCN) to clearly communicate to the motor fuel industry and other interested parties such as state excise taxing authorities, the motor fuel terminal facilities that meet the definitions of Internal Revenue Code Section 4081 and the regulations thereunder. The IRS intends to use the terminal numbers to coordinate dyed fuel compliance activities and in the future, excise fuel information reporting systems. IRS encourages states to adopt and use the numbers for motor fuel information reporting where appropriate. This list is published under the authority of Internal Revenue Code Section 6103 (k) (7).

What is a Terminal Control Number (TCN)?

A terminal control number is a number that identifies an approved terminal in the bulk transfer/terminal system. A taxable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code —S—) will be issued a TCN for each physical location. Only one TCN will be assigned per terminal location per terminal operator.

What is an approved Terminal?

Approved motor fuel terminals, as defined by Internal Revenue Code Section 4081 and the regulations thereunder, receive taxable fuel via a pipeline, ship, or barge, deliver taxable fuel across a truck rack and be operated by a terminal operator who is properly registered in good standing with the IRS. Only those taxpayer's, who are registered with the IRS on registration for Tax- Free Transactions--Form 637 (637 Registration) with a suffix code of ''S'' may operate an approved terminal. Each TCN identifies a uniqe physical location in the bulk transport/delivery system and is therefore independent of the registered operator.

When does a Terminal Operator need to notify IRS of Changes?

A terminal operator must notify the IRS for any of the following changes:

- terminal ownership or operator changes; or
- a new terminal is opened; or
- a new terminal ceases operation

How should notification be made?

Notify the IRS District Office where the Form 637 is issued of the change and by FAX the IRS TCN Coordinator at:

Internal Revenue Service CP:EX:ST:E
Attn: TCN Coordinator (202) 622-5407 FAX

Changes to the terminal status or other information will be published by the Excise Program Office in the Headquarters Office. Notification is required in order to retain approved status of the terminal and 637 Registration. Failure to notify of changes may lead to suspension of the terminal or 637 Registration. Changes or suspensions of approved status will be published as needed.

If you have any questions regarding the approved terminals or the listing, you may contact: Terminal Control Number Coordinator - Mary Burwell at (202) 622-4379 (not a toll free number).

Thomas R. Hull,

National Director, Specialty Taxes.

TCN	Terminal Name	Address	City	State	Zip
T-92-AK-4500	Chevron Anchorage	459 W Bluff Rd	Anchorage	AK	99501
T-92-AK-4501	MAPCO Alaska Anchorage	1076 Ocean Dock Road	Anchorage	AK	99501
T-92-AK-4502	Texaco R & M Anchorage	1601 Tidewater	Anchorage	AK	99501
T-92-AK-4504	Tesora-Anchorage	1522 Anchorage Port Rd	Anchorage	AK	99501
T-92-AK-4505	Tesoro Alaska Petroleum Co	Mile 22.5 Kenai Spur Road	Kenai	AK	99611
T-92-AK-4503	MAPCO Alaska North Pole	1150 H & H Lane	North Pole	AK	99705
T-63-AL-2333	Murphy Oil USA - Oxford	2625 Highway 78 East	Anniston	AL	36201
T-63-AL-2300	Amoco Oil Birmingham	1600 Mims Ave Southwest	Birmingham	AL	35211
T-63-AL-2301	Chevron Birmingham	2400 28th St Southwest	Birmingham	AL	35211
T-63-AL-2302	CITGO Birmingham	2200 25th St Southwest	Birmingham	AL	35211
T-63-AL-2303	Crown Central Birmingham	2500 Nabors Road	Birmingham	AL	35211
T-63-AL-2305	B P Oil Co Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2306	Marathon Birmingham	2704 28th St Southwest	Birmingham	AL	35211
T-63-AL-2307	Phillips 66 Birmingham	2635 Balsam Avenue	Birmingham	AL	35211
T-63-AL-2308	Shell Birmingham	2601 Wilson Road	Birmingham	AL	35221
T-63-AL-2309	Southern Facilities Birmingham	2400 Nabors Road	Birmingham	AL	35211
T-63-AL-2310	Star Enterprise Birmingham	2529 28th St Southwest	Birmingham	AL	35211
T-63-AL-2311	Kerr-McGee Birmingham	2600 Ishkooda Road	Birmingham	AL	35211
T-63-AL-2312	Louis Dreyfus Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2321	Kerr-McGee Blakely Island	U S Hwy 90	Blakely Island	AL	36633
T-63-AL-2316	Coastal Mobile Chickasaw	200 Viaduct Rd	Chickasaw	AL	36611
T-63-AL-2314	Amoco Oil Mobile	Hwy 90 and 98	Mobile	AL	36601
T-63-AL-2315	Coastal Fuels Mobile	PO Box 1423	Mobile	AL	36633
T-63-AL-2336	BP OIL MOBILE	101 Bay Bridge Road	Mobile	AL	36610
T-72-AL-2338	EOTT Energy Corp - Mobile	Magazine Point	Mobile	AL	36610
T-72-AL-2339	Midstream Fuel Service-Mobile	Hwy 90/98 Blakeley Island	Mobile	AL	36618
T-72-AL-2340	Radcliff Economy Marine-Mobile	5 South Water St Extension	Mobile	AL	36652
T-63-AL-2304	Southeast Terminal Montgomery	Hwy 31 North	Montgomery	AL	36108
T-63-AL-2322	Amoco Oil Montgomery	3560 Well Rd	Montgomery	AL	36108
T-63-AL-2323	Chevron USA Montgomery	200 Hunter Loop Road	Montgomery	AL	31608
T-63-AL-2324	B P Oil Mongtomery	Access Highway 31 North	Montgomery	AL	36108
T-63-AL-2325	Marathon Montgomery	320 Hunter Loop Rural Rt 6	Montgomery	AL	36125
T-63-AL-2326	S T Services Montgomery	520 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2327	Southern Facilities Montgomery	420 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2330	S T Services Moundville	PO Box 68	Moundville	AL	35474
T-63-AL-2334	Shell Chemical Co. - Saraland	400 Industrial Parkway	Saraland	AL	36571
T-63-AL-2335	Murphy Sheffield	136 Blackwell Road	Sheffield	AL	35660
T-63-AL-2329	Hunt Refining Co	1855 Fairlawn RD	Tuscaloosa	AL	35401
T-71-AR-2451	Lion Oil El Dorado	1000 McHenry	El Dorado	AR	71730
T-71-AR-2452	TEPPCO El Dorado	4021 Calion Hwy.	El Dorado	AR	71730
T-71-AR-2453	Williams Pipe Line Fort Smith	8101 Hwy 71	Fort Smith	AR	72903
T-71-AR-2454	TEPPCO Helena	826 Old Highway	Helena	AR	72342
T-71-AR-2456	Transmontaigne N. Little Rock	2725 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2457	Exxon USA North Little Rock	2724 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2458	La Gloria Oil N Little Rock	2626 Central Airport Road	North Little Rock	AR	72117
T-71-AR-2459	Transmontaigne Little Rock	3222 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2464	Arkansas Terminaling & Trading	2207 Central Airport Rd.	North Little Rock	AR	72117
T-71-AR-2467	Razorback Terminaling	2801 West Hwy 102 Rt 2	Rogers	AR	72756
T-71-AR-2460	Cross Oil Refining& Mktg. Inc.	484 E. 6th Street	Smackover	AR	71762
T-71-AR-2463	Truman Arnold West Memphis	South of 8th Street	West Memphis	AR	72303
T-86-AZ-4311	Sunbelt Refining Coolidge	5415 E Randolph Rd	Coolidge	AZ	85228
T-86-AZ-4316	La Paz Products - Parker	31645 Industrial Lane	Parker	AZ	85344
T-86-AZ-4300	Caljet Phoenix	125 N 53rd Avenue	Phoenix	AZ	85015
T-86-AZ-4301	Chevron USA Phoenix	5110 West Madison	Phoenix	AZ	85043
T-86-AZ-4303	Pro Petroleum Phoenix	408 S 43rd Avenue	Phoenix	AZ	85009
T-86-AZ-4304	SFPP LP Phoenix	49 North 53rd Ave Van Buren	Phoenix	AZ	85063
T-86-AZ-4305	Mobil Oil Phoenix	5333 W Van Buren	Phoenix	AZ	85043
T-86-AZ-4306	Texaco R & M Phoenix	5325 West Van Buren	Phoenix	AZ	85043
T-86-AZ-4307	Tosco Corporation	10 South 51st Avenue	Phoenix	AZ	85043
T-86-AZ-4313	ARCO Phoenix	5333 W Van Buren St	Phoenix	AZ	85043
T-86-AZ-4308	Chevron USA Tucson	3865 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4309	S T Services Tucson	3605 South Dodge	Tucson	AZ	85713
T-86-AZ-4310	SFPP LP Tucson	3841 East Refinery Way	Tucson	AZ	85713

TCN	Terminal Name	Address	City	State	Zip
T-86-AZ-4312	Texaco Tucson	3735 South Dodge Boulevard	Tucson	AZ	85713
T-33-CA-4750	Mobil Oil Atwood	1477 Jefferson	Anaheim	CA	92806
T-77-CA-4655	Kern Oil Bakersfield	7724 East Panama Lane	Bakersfield	CA	93307
T-77-CA-4656	Sunland Refining Bakersfield	2152 Coffee Road	Bakersfield	CA	93302
T-77-CA-4657	Texaco Bakersfield	2436 Fruitvale Avenue	Bakersfield	CA	93302
T-77-CA-4661	Golden Bear Refinery	Norris Rd & Manor	Bakersfield	CA	93308
T-77-CA-4664	San Joaquin - Bakersfield	3542 Shell St.	Bakersfield	CA	93308
T-68-CA-4603	Exxon USA Benicia	3410 East Second Street	Benicia	CA	94510
T-33-CA-4753	ARCO Colton	2395 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4754	Mobil Oil Colton	2305 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4756	Chevron USA Colton	2297 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4757	SFPP LP Colton	2359 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4758	Shell Oil Colton	2307 South Riverside Ave.	Bloomington	CA	92316
T-33-CA-4759	Texaco Colton	2237 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4766	Toscos Corporation Bloomington	2301 S Riverside	Bloomington	CA	92316
T-94-CA-4700	SFPP LP Brisbane	950 Tunnel Av.	Brisbane	CA	94005
T-33-CA-4751	GATX Tank Storage	2000 East Sepulveda Blvd	Carson	CA	90810
T-33-CA-4769	ARCO Carson	2149 E Sepulreda Blvd	Carson	CA	90749
T-68-CA-4600	SFPP LP Chico	2570 Hegan Lane	Chico	CA	95927
T-68-CA-4601	Shell Oil Chico	2590 Hegan Lane	Chico	CA	95928
T-33-CA-4755	Calnev Pipe Line Colton	2051 West Slover Avenue	Colton	CA	92324
T-68-CA-4605	Wickland Oil Crockett	90 San Pablo Ave	Crockett	CA	94525
T-33-CA-4761	Calnev Pipe Line Daggett	34277 Daggett-Yermo Road	Daggett	CA	92327
T-33-CA-4762	S T Services Imperial	349 Aten Road	El Centro	CA	92251
T-95-CA-4800	Chevron USA El Segundo	302 West El Segundo Blvd	El Segundo	CA	90245
T-68-CA-4606	Chevron USA Eureka	3400 Christie Street	Eureka	CA	95501
T-68-CA-4615	Tosco Corporation Eureka	1200 Railroad Ave	Eureka	CA	95502
T-77-CA-4651	SFPP LP Fresno	4149 South Maple Avenue	Fresno	CA	93725
T-77-CA-4660	SFPP, L.P.	4073 S Maple	Fresno	CA	93725
T-68-CA-4608	Pacific Refining Co Hercules	4901 San Pablo Avenue	Hercules	CA	94547
T-33-CA-4771	Chevron USA Huntington Beach	17881 Gothard St	Huntington Beach	CA	92647
T-33-CA-4763	SFPP LP Imperial	345 W Aten Road	Imperial	CA	92251
T-33-CA-4764	ARCO Long Beach	5905 Paramount Ave	Long Beach	CA	90805
T-33-CA-4767	Petro-Diamond Terminal Company	1920 Lugger Way	Long Beach	CA	90813
T-33-CA-4779	Chemoil Long Beach	2365 E Sepulveda Blvd	Long Beach	CA	90810
T-95-CA-4803	Toscos S. Broadway Los Angeles	13500 South Broadway	Los Angeles	CA	90061
T-95-CA-4806	Toscos Center Street LA	501 N Center St	Los Angeles	CA	90012
T-95-CA-4809	Shell Oil Los Angeles	2015 Long Beach Ave	Los Angeles	CA	90058
T-68-CA-4607	Chevron USA Avon	611 Solano Way	Martinez	CA	94553
T-68-CA-4610	Shell Oil Martinez	1801 Marina Vista	Martinez	CA	94553
T-68-CA-4611	Tosco Refining Martinez	Solano Way & Waterfront RD	Martinez	CA	94553
T-95-CA-4811	Chevron USA Montebella	601 South Vail Avenue	Montebella	CA	90640
T-33-CA-4772	SFPP LP Orange	1350 North Main Street	Orange	CA	92667
T-95-CA-4808	Paramount Petroleum	14700 Downey Avenue	Paramount	CA	90723
T-77-CA-4658	Tesoro Rfg Pt Hueneme	237 East Hueneme Rd	Pt Hueneme	CA	93041
T-68-CA-4613	SFPP LP Rancho Cordova	2901 Bradshaw Rd	Rancho Cordova	CA	95741
T-33-CA-4760	Tosco Refining Colton	271 E Slover Avenue	Rialto	CA	92376
T-68-CA-4614	ARCO Richmond	1306 Canal Boulevard	Richmond	CA	94807
T-68-CA-4616	Chevron Richmond	155 Castro St	Richmond	CA	94802
T-68-CA-4617	Tosco Corporation Richmond	1300 Canal Blvd	Richmond	CA	94804
T-68-CA-4619	IMTT-Richmond-CA	100 Cutting Blvd	Richmond	CA	94804
T-94-CA-4705	Time Oil Company - Richmond	488 Wright Ave.	Richmond	CA	94802
T-68-CA-4618	Tosco Corporation Sacramento	76 Broadway	Sacramento	CA	95818
T-68-CA-4621	Chevron USA Sacramento	2420 Front Street	Sacramento	CA	95818
T-68-CA-4624	Tosco Refining Sacramento	66 Broadway	Sacramento	CA	95818
T-33-CA-4773	Chevron USA San Diego	2351 East Harbor Drive	San Diego	CA	92113
T-33-CA-4774	Pacific Southwest San Diego	4370 LaJolla Village Drive	San Diego	CA	92113
T-33-CA-4776	SFPP LP San Diego	9950 San Diego Mission Road	San Diego	CA	92108
T-33-CA-4777	Shell Oil San Diego	9950 San Diego Mission Blvd.	San Diego	CA	92108
T-33-CA-4778	Texaco San Diego	9966 San Diego Mission Road	San Diego	CA	92108
T-33-CA-4782	ARCO San Diego	2295 E Harbor Drive	San Diego	CA	92113
T-33-CA-4783	Mobil Oil San Diego	9950 San Diego Mission Rd	San Diego	CA	92108
T-33-CA-4790	UNOCAL San Diego	2750 Murphy Canyon Rd	San Diego	CA	92123
T-77-CA-4650	Chevron USA San Jose	1020 Berryessa Road	San Jose	CA	95133
T-77-CA-4652	SFPP LP San Jose	2150 Kruse Avenue	San Jose	CA	95131
T-77-CA-4653	Shell Oil San Jose	2165 OToole Avenue	San Jose	CA	95131
T-33-CA-4780	GATX Terminals San Pedro	Port of LA Berths 70-71	San Pedro	CA	90733
T-33-CA-4781	Western Fuel Oil Co San Pedro	2100 North Gaffey	San Pedro	CA	90731
T-95-CA-4802	Golden West Santa Fe Springs	13415 Carmenita Road	Santa Fe Springs	CA	90670
T-33-CA-4784	ARCO Signal Hill	2350 Hathaway Drive	Signal Hill	CA	90806
T-33-CA-4785	Shell Oil Signal Hill	2457 Redondo Avenue	Signal Hill	CA	90806
T-94-CA-4703	Shell Oil San Francisco	135 North Access Road	So San Francisco	CA	94080

TCN	Terminal Name	Address	City	State	Zip
T-95-CA-4807	ARCO Vinvale Terminal	8601 S Garfield Ave	South Gate	CA	90280
T-68-CA-4609	ARCO Stockton Terminal	2700 West Washington St	Stockton	CA	95203
T-68-CA-4625	Tosco Refining Stockton	3505 Navy Drive	Stockton	CA	95203
T-68-CA-4626	S T Services Stockton	2941 Navy Drive	Stockton	CA	95203
T-68-CA-4628	Shell Oil Stockton	3515 Navy Dirve	Stockton	CA	95203
T-68-CA-4629	Tesoro Refining Mktg Stockton	3003 Navy Drive	Stockton	CA	95205
T-33-CA-4786	Mobil Oil Torrance	3700 West 190th Street	Torrance	CA	90509
T-68-CA-4604	Chevron USA Banta	22888 S Kasson Rd	Tracy	CA	95376
T-95-CA-4804	Shell Oil Van Nuys	8100 Haskell Avenue	Van Nuys	CA	91406
T-95-CA-4810	Chevron USA Van Nuys	15359 Oxnard Street	Van Nuys	CA	91411
T-77-CA-4654	Shell Oil Ventura	3284 North Ventura Avenue	Ventura	CA	93001
T-95-CA-4805	Mobil Oil Vernon	2709 East 37th Street	Vernon	CA	90058
T-68-CA-4612	ARCO Sacramento	1701 S River Rd	West Sacramento	CA	95691
T-68-CA-4622	Shell Oil West Sacramento	1509 Sourh River Road	West Sacramento	CA	95691
T-68-CA-4631	ARCO West Sacramento	1700 South River Road	West Sacramento	CA	95691
T-33-CA-4752	Tosco Corporation Wilmington	1660 W Anaheim St	Wilmington	CA	90744
T-33-CA-4768	Texaco Long Beach	1926 East Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4770	Texaco LA Harbor	2101 East Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4789	Ultramar Inc Wilmington	2402 E Anaheim St	Wilmington	CA	90744
T-84-CO-4100	Chase Pipeline Aurora	15000 East Smith Road	Aurora	CO	80011
T-84-CO-4108	Diamond Colorado Springs	7810 Drennan	Colorado Springs	CO	80925
T-84-CO-4101	Colorado Refining Denver	5800 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4102	Conoco Denver	5575 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4103	Diamond Shamrock Denver	3601 East 56th Street	Commerce City	CO	80022
T-84-CO-4104	Phillips 66 Commerce City	3960 East 56th Avenue	Commerce City	CO	80022
T-84-CO-4105	Kaneb PipeLine Dupont	8160 Krameria	DuPont	CO	80024
T-84-CO-4106	Kaneb PipeLine Fountain	1004 S. Sante Fe	Fountain	CO	80817
T-84-CO-4107	Landmark Petroleum Fruita	1493 Hwy 6 & 50	Fruita	CO	81521
T-84-CO-4109	Sinclair Pipeline Henderson	8581 East 96th Ave	Henderson	CO	80640
T-06-CT-1250	Hoffman Fuel Co. of Bridgeport	156 East Washington Avenue	Bridgeport	CT	06604
T-06-CT-1256	Shell Bridgeport Plant	250 Eagles Nest Road	Bridgeport	CT	06607
T-06-CT-1279	Inland Fuel Terminal	215 Admiral St.	Bridgeport	CT	06605
T-06-CT-1281	Hall & Muska, Inc.	152 Broad Borook Rd.	Broad Brook	CT	06016
T-06-CT-1253	Star Enterprise E Hartford	Riverside Drive	East Hartford	CT	06108
T-06-CT-1277	Sprague Energy	247 Riverside Dr.	East Hartford	CT	06902
T-06-CT-1283	General Oil Energy Centers	133 Riverside Drive	East Hartford	CT	06128
T-06-CT-1282	Anthony Troisno & Sons, Inc.	777 Enfield St.	Enfield	CT	06082
T-06-CT-1255	Amerada Hess Groton	443 Eastern Point Road	Groton	CT	06340
T-06-CT-1275	William R. Peterson Oil Co.	44 River Rd.	Middletown	CT	06457
T-06-CT-1254	Northeast Petroleum New Haven	481 East Shore Parkway	New Haven	CT	06512
T-06-CT-1257	Amerada Hess New Haven	100 River Street	New Haven	CT	06513
T-06-CT-1258	New Haven Terminal Inc	100 Waterfront St	New Haven	CT	06512
T-06-CT-1261	Getty Terminal New Haven	85 Forbes Avenue	New Haven	CT	06512
T-06-CT-1262	Gulf Oil New Haven	500 Waterfront Street	New Haven	CT	06512
T-06-CT-1263	Mobil Oil New Haven	134 Forbes Avenue	New Haven	CT	06512
T-06-CT-1264	Gateway Terminal New Haven	400Waterfront St	New Haven	CT	06512
T-06-CT-1273	New Haven Terminal-New Haven	100 Waterfront St.	New Haven	CT	06572
T-06-CT-1274	Wyatt Energy Incorporated	280 Waterfront St	New Haven	CT	06512
T-06-CT-1285	City Coal of New London, Inc.	410 Bank St.	New London	CT	06320
T-06-CT-1272	Devine Bros Inc - Norwalk	38 Commerce St.	Norwalk	CT	06850
T-06-CT-1260	Louis Dreyfus Norwich	340 West Thames Street	Norwich	CT	06360
T-06-CT-1276	Lehigh Oil Co., Inc.	One Terminal Way	Norwich	CT	06360
T-06-CT-1280	B & B Petroleum Inc.	1 Brownstore Ave.	Portland	CT	06480
T-06-CT-1284	Port Oil	100 Brownstone Ave.	Portland	CT	06480
T-06-CT-1252	CITGO Rocky Hill	109 Dividend Road	Rocky Hill	CT	06067
T-06-CT-1251	Sprague Energy Stamford	10 Water St	Stamford	CT	06902
T-06-CT-1268	Hoffman Fuel Co. of Stamford	100 Southfield Avenue	Stamford	CT	06902
T-06-CT-1278	Genovese Industries, Inc.	52 Pulaski St.	Stamford	CT	06904
T-06-CT-1259	Amerada Hess Wethersfield	50 Burbank Road	Wethersfield	CT	06109
T-06-CT-1270	Northeast Petroleum Wethersfld	80 Burbank Road	Wethersfield	CT	06109
T-52-MD-1553	S T Services - Washington	401 Farragut Street NE	Washington	DC	20111
T-52-MD-1564	S T Services Washington (M St)	1333 M St SE	Washington	DC	20111
T-51-DE-1601	Blades Terminal-Peninsula Oil	Blades Causeway	Blades	DE	19973
T-51-DE-1600	Star Enterprise Delaware City	River Rd and J Street	Delaware City	DE	19706
T-51-DE-1603	Wilco Inc, Peninsula Oil Co	PO Box 389	Seaford	DE	
T-59-FL-2138	Coastal Fuels Cape Canaveral	10 Tanker Turn Rd.	Cape Canaveral	FL	32920
T-65-FL-2150	Coastal Fuels Port Everglades	2401 Eisenhower Blvd	Fort Lauderdale	FL	33316
T-65-FL-2153	Chevron USA Port Everglades	1400 SE 24th Street	Fort Lauderdale	FL	33316
T-65-FL-2156	Amerada Hess Port Everglades	1501 SE 20th St	Fort Lauderdale	FL	33316
T-65-FL-2157	CITGO Port Everglades	800 SE 28th Street	Fort Lauderdale	FL	33316
T-65-FL-2160	Marathon Oil Port Everglades	1601 SE 20th St	Fort Lauderdale	FL	33316
T-65-FL-2161	Mobil Oil Port Everglades	1150 Spangler Blvd	Fort Lauderdale	FL	33316

TCN	Terminal Name	Address	City	State	Zip
T-65-FL-2163	Shell Oil Port Everglades	909 SE 24 St	Fort Lauderdale	FL	33316
T-65-FL-2165	Louis Dreyfus Port Everglades	2701 SE 14th Ave	Fort Lauderdale	FL	33316
T-59-FL-2115	Murphy Oil Freeport	200 Center St	Freeport	FL	32439
T-65-FL-2154	GATX Terminals Port Everglades	1500 SE 26 Street	Ft Lauderdale	FL	33316
T-65-FL-2151	S T Services Homestead	13195 S W 288th Street	Homestead	FL	33033
T-59-FL-2102	Amerada Hess Jacksonville	2617 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2103	Amoco Oil Jacksonville	2054 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2104	Chevron USA Jacksonville	3117 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2105	Coastal Fuels Jacksonville	3425 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2106	B P Oil Jacksonville	12101 Heckscher Dr.	Jacksonville	FL	32218
T-59-FL-2108	Koch Refining Jacksonville	1974 Talleyrand Avenue	Jacksonville	FL	32239
T-59-FL-2109	Petroleum Fuel Jacksonville	1903 E Adams St	Jacksonville	FL	32202
T-59-FL-2112	S T Services Jacksonville	6531 Evergreen Avenue	Jacksonville	FL	32208
T-59-FL-2113	Kerr-McGee Jacksonville	2470 Talleyrand Blvd	Jacksonville	FL	32206
T-59-FL-2114	CITGO - Niceville	904 Bayshore Drive	Niceville	FL	32578
T-59-FL-2122	Coastal Fuels Point Manatee	PO Box 939	Palmetto	FL	34220
T-59-FL-2116	Chevron USA Panama City	500 West Fifth Street	Panama City	FL	32402
T-59-FL-2117	CITGO Panama City	122 South Center Avenue	Panama City	FL	32401
T-59-FL-2118	Coastal Fuels Pensacola	640 S Barracks St	Pensacola	FL	32501
T-59-FL-2119	Radcliff/Economy-Pensacola	3088 Barrancas Avenue	Pensacola	FL	32507
T-59-FL-2120	Louis Dreyfus Pensacola	5115 South Clubb St	Pensacola	FL	32501
T-65-FL-2152	Amoco Oil Port Everglades	1180 Spangler Road	Port Everglades	FL	33316
T-65-FL-2164	Star Enterprise Port Everglade	1200 Southeast 28th Street	Port Everglades	FL	33316
T-59-FL-2124	Shell Oil Port Tampa	6500 Commerce St	Port Tampa	FL	33616
T-59-FL-2125	Murphy Oil St Marks	585 Port Leon Drive	St Marks	FL	32355
T-59-FL-2127	TOC Terminals St Marks	25 miles south of Tallahassee	St Marks	FL	32355
T-59-FL-2129	GATX Terminal Taft	9919 Orange Avenue	Taft	FL	32824
T-59-FL-2100	Murphy Oil USA Tampa	1306 Ingram Ave	Tampa	FL	33601
T-59-FL-2101	Louis Dreyfus Tampa	1523 Port Avenue	Tampa	FL	33605
T-59-FL-2107	Amerada Hess Tampa	504 N 19th Street	Tampa	FL	33605
T-59-FL-2123	GATX Terminals Port Tampa	100 GATX Drive	Tampa	FL	33605
T-59-FL-2130	Amoco Oil Tampa	848 McCloskey Boulevard	Tampa	FL	33605
T-59-FL-2131	Chevron USA Tampa	5500 Commerce Street	Tampa	FL	33616
T-59-FL-2133	CITGO Tampa	801 McCloskey Blvd	Tampa	FL	33605
T-59-FL-2136	Marathon Oil Tampa	425 South 20th Street	Tampa	FL	33605
T-58-GA-2500	Phillips Pipeline Albany	1603 W Oakridge Dr	Albany	GA	31707
T-58-GA-2501	Williams Energy Ventures-Alban	1722 W Oakridge Dr	Albany	GA	31707
T-58-GA-2502	Louis Dreyfus Albany	1162 Gillionville Rd	Albany	GA	31707
T-58-GA-2505	Louis Dreyfus Americus	Plains Road Highway 280 West	Americus	GA	31709
T-58-GA-2506	Chevron USA Athens	3460 Jefferson Road	Athens	GA	30607
T-58-GA-2508	Louis Dreyfus Athens	3450 Jefferson Road	Athens	GA	30607
T-58-GA-2511	Louis Dreyfus Atlanta	3132 Parrot Avenue Northwest	Atlanta	GA	30318
T-58-GA-2504	S T Services Augusta	209 Sand Bar Ferry Road	Augusta	GA	30901
T-58-GA-2514	Star Enterprise Bainbridge	803 East Shotwell Street	Bainbridge	GA	31717
T-58-GA-2515	Louis Dreyfus Bainbridge	1909 East Shotwell Street	Bainbridge	GA	31717
T-58-GA-2516	Stratus Petroleum Blakely	Hwy 62 W & Chattahoochee Rd	Blakely	GA	31723
T-58-GA-2517	S T Services Bremen	870 Alabama Avenue	Bremen	GA	30110
T-58-GA-2518	S T Services Brunswick	211 Newcastle Street	Brunswick	GA	31520
T-58-GA-2519	Fina Oil & Chemical Atlanta	2970 Parrott Avenue	Chattahoochee	GA	30318
T-58-GA-2520	Chevron USA Columbus	5131 Miller Road	Columbus	GA	31908
T-58-GA-2521	Crown Central Columbus	4840 Miller Rd	Columbus	GA	31904
T-58-GA-2522	ITAPCO Inc Columbus	5225 Miller Road	Columbus	GA	31904
T-58-GA-2523	Marathon Oil Columbus	5030 Miller Road	Columbus	GA	31908
T-58-GA-2524	S T Services Columbus	800 Lumpkin Boulevard	Columbus	GA	31901
T-58-GA-2510	Star Enterprise Doraville	4127 Winters Chapel Road	Doraville	GA	30360
T-58-GA-2525	Amerada Hess Doraville	2836 Woodwin Road	Doraville	GA	30362
T-58-GA-2526	Amoco Doraville Peachtree	6430 New Peachtree Road	Doraville	GA	30340
T-58-GA-2527	Shell Oil Products-Doraville	4201 Winters Chapel Road	Doraville	GA	30340
T-58-GA-2528	Chevron USA Doraville	4026 Winters Chapel Road	Doraville	GA	30362
T-58-GA-2529	CITGO Doraville	3877 Flowers Drive	Doraville	GA	30362
T-58-GA-2531	Exxon USA Doraville	4143 Winters Chapel Rd	Doraville	GA	30360
T-58-GA-2532	Marathon Oil Doraville	6293 New Peachtree Road	Doraville	GA	30341
T-58-GA-2533	Phillips Pipeline Doraville	4149 Winters Chapel Road	Doraville	GA	30360
T-58-GA-2534	Amoco Doraville Chapel	4064 Winters Chapel Rd	Doraville	GA	30340
T-58-GA-2535	Southern Facilities Doraville	2797 Woodwin Road	Doraville	GA	30360
T-58-GA-2537	Louis Dreyfus Griffin	643B East McIntosh Road	Griffin	GA	30223
T-58-GA-2538	Chevron USA Macon	2476 Allen Road	Macon	GA	31206
T-58-GA-2541	Marathon Oil Macon	2445 Allen Road	Macon	GA	31206
T-58-GA-2542	S T Services Macon	6225 Hawkinsville Road	Macon	GA	31206
T-58-GA-2543	Southern Facilities Macon	2505 Allen Road	Macon	GA	31206
T-58-GA-2544	Louis Dreyfus Macon	5041 Forsyth Rd.	Macon	GA	31210
T-58-GA-2545	Marathon Oil Powder Springs	3895 Anderson Farm Road NW	Powder Springs	GA	30073

TCN	Terminal Name	Address	City	State	Zip
T-58-GA-2547	Louis Dreyfus Southeast	2671 Calhoun Road	Rome	GA	30161
T-58-GA-2548	S T Services Savannah	2 Wahlstrum Road	Savannah	GA	31404
T-58-GA-2550	Colonial Terminal, Inc.	101 North Lathrop Ave	Savannah	GA	31415
T-58-GA-2552	UNOCAL Savannah	Deptford Tract President St	Savannah	GA	31412
T-99-HI-4552	Chevron USA Hilo	666 Kalanianaole Avenue	Hilo	HI	96720
T-99-HI-4558	Shell Oil Hilo	661 Kalanianaole Ave	Hilo	HI	96720
T-99-HI-4559	Toscos Hilo	607 Kalanianaole Ave	Hilo	HI	96420
T-99-HI-4560	Texaco Hilo	999 Kalanianaole Ave	Hilo	HI	96720
T-99-HI-4561	BHP Petroleum Americas Hilo	701 Kalanianaole Street	Hilo	HI	96720
T-99-HI-4553	Chevron USA Honolulu	777 North Nimitz Highway	Honolulu	HI	96817
T-99-HI-4556	Toscos Honolulu	411 Pacific St	Honolulu	HI	96814
T-99-HI-4557	Shell Oil Honolulu	789 N Nimitz Hwy.	Honolulu	HI	96817
T-99-HI-4554	Chevron USA Kahului	100A Hobron Avenue	Kahului	HI	96732
T-99-HI-4563	BHP Petro Americas Kahului	140 H Hobron Ave	Kahului	HI	96742
T-99-HI-4565	UNOCAL Kahului	76 Hobron Ave	Kahului	HI	96732
T-99-HI-4566	Shell Kahului	60 Hobron Ave.	Kahului	HI	96732
T-99-HI-4562	Shell Oil Nawiliwili	3145 Waapa Rd	Lihue	HI	96766
T-99-HI-4551	Texaco Barbers Point	Barbers Point	Oahu	HI	96706
T-99-HI-4555	Chevron USA Port Allen	A & B Road Port	Port Allen	HI	96704
T-42-IA-3450	Amoco Oil Bettendorf	75 South 31st Street	Bettendorf	IA	52722
T-42-IA-3451	Koch Refining Bettendorf	4100 Elm St	Bettendorf	IA	52722
T-42-IA-3452	Phillips Petro Bettendorf	2925 Depot Street	Bettendorf	IA	52722
T-42-IA-3471	CITGO - Bettendorf	312 South Bellingham Street	Bettendorf	IA	52722
T-42-IA-3465	Williams Pipe Line Mason City	2810 East Main	Clear Lake	IA	50428
T-42-IA-3463	Williams Pipe Line Iowa City	912 First Avenue	Coralville	IA	52241
T-42-IA-3454	Amoco Oil Council Bluffs	829 East South Bridge Rd	Council Bluffs	IA	51501
T-42-IA-3455	National Coop Council Bluffs	825 East South Omaha Bridge Rd	Council Bluffs	IA	51502
T-42-IA-3456	Amoco Oil Des Moines	1501 Northwest 86th Street	Des Moines	IA	50325
T-42-IA-3457	Williams Pipe Line Des Moines	2503 Southeast 43rd Street	Des Moines	IA	50317
T-42-IA-3459	Koch Refining Dubuque	PO Box 921	Dubuque	IA	52004
T-42-IA-3460	Williams Pipe Line Dubuque	8038 St Joes Prairie Rd	Dubuque	IA	52003
T-42-IA-3461	Williams Pipe Line Fort Dodge	6 miles from Ft Dodge	Duncombe	IA	50532
T-42-IA-3462	Sinclair Pipeline Fort Madison	2010 35th St.	Fort Madison	IA	52627
T-42-IA-3458	Amoco Oil Dubuque	8 Mi W of Dubuque on Hwy 20	Julian	IA	52001
T-42-IA-3464	Kaneb Pipe Line Le Mars	US Hwy 75/7 Miles N of LeMars	Le Mars	IA	51031
T-42-IA-3466	Kaneb Pipe Line Milford	1 mile W of Milford & Hwy 71	Milford	IA	51351
T-42-IA-3467	Williams Pipe Line Milford	RT 1	Milford	IA	51351
T-42-IA-3468	Amoco Oil North Liberty	2092 Hwy 965 NE	North Liberty	IA	52317
T-42-IA-3469	Amoco Oil Ottumwa	Three miles west on US 34	Ottumwa	IA	52501
T-42-IA-3470	Heartland Pleasant Hill	4500 Vandalia	Pleasant Hill	IA	50317
T-42-IA-3472	Kaneb Pipeline Rock Rapids	State Hwy 9	Rock Rapids	IA	51246
T-42-IA-3453	Williams Pipe Line Sioux South	3701 South Lewis Blvd	Sioux City	IA	51106
T-42-IA-3473	Williams Pipe Line Sioux City	4300 41st Street	Sioux City	IA	51108
T-42-IA-3474	Williams Pipe Line Waterloo	5360 Eldora Rd	Waterloo	IA	50701
T-82-ID-4150	Boise Idaho Terminal	321 North Curtis Road	Boise	ID	83707
T-82-ID-4151	Northwest Terminaling Boise	201 N. Phillips Rd.	Boise	ID	83704
T-82-ID-4152	Flying J Boise	70 North Philipi Road	Boise	ID	83706
T-82-ID-4155	Amoco Oil Burley	421 East Highway 81	Burley	ID	83318
T-82-ID-4157	Burley Products Terminal	425 East Hwy 81 PO Box 233	Burley	ID	83318
T-82-ID-4159	Chevron Pipeline Pocatello	1189 Tank Farm Rd.	Pocatello	ID	83201
T-36-IL-3319	Williams Pipe Line Amboy	1222 U S Route 30	Amboy	IL	61310
T-36-IL-3305	GATX Terminals Argo	8500 West 68th Street	Argo	IL	60501
T-36-IL-3304	CITGO Mt Prospect	2316 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3307	Marathon Mt Prospect	3231 Busse Road	Arlington Heights	IL	60005
T-36-IL-3316	Shell Oil Des Plaines	1605 East Algonguin Road	Arlington Heights	IL	60005
T-36-IL-3322	ARCO Des Plaines Terminal	1000 Terminal Drive	Arlington Heights	IL	60005
T-37-IL-3364	Meioco Terminal	Rt 49 South	Ashkum	IL	60911
T-37-IL-3352	Clark Rfg Peoria	7022 South Cilco Lane	Bartonville	IL	61607
T-36-IL-3315	Shell Oil Argo	8600 West 71st Street	Bedford Park	IL	60501
T-36-IL-3300	Clark Rfg Blue Island Term	131st & Homan Avenue	Blue Island	IL	60406
T-36-IL-3310	Martin Oil Blue Island	3210 West 131st Street	Blue Island	IL	60406
T-36-IL-3373	Clark Rfg Blue Island	Kedzie Ave. & 131st	Blue Island	IL	60406
T-37-IL-3366	Phillips Petroleum E St Louis	3300 Mississippi Ave	Cahokia	IL	62206
T-37-IL-3358	Marathon Champaign	511 S Staley Road	Champaign	IL	61821
T-37-IL-3367	S T Services Chillicothe	20206 Rt 29 North	Chillicothe	IL	61523
T-37-IL-3350	Amoco Oil Peoria	1101 Wesley Road	Creve Coeur	IL	61611
T-37-IL-3355	Hicks Olls & Hicks Gas Inc	1118 Wesley Road	Creve Coeur	IL	61610
T-36-IL-3301	Amoco Oil Des Plaines	2201 South Elmhurst Rd	Des Plaines	IL	60018
T-36-IL-3311	Mobil Oil Des Plaines	2312 Terminal Drive	Des Plaines	IL	60005
T-36-IL-3318	CITGO - Des Plaines	2304 Terminal Drive	Des Plaines	IL	60056
T-37-IL-3368	Shell Oil Effingham	Rural Route 3	Effingham	IL	62401
T-36-IL-3302	Amoco Oil Forest View	4811 South Harlem Avenue	Forest View	IL	60402

TCN	Terminal Name	Address	City	State	Zip
T-36-IL-3312	Petroleum Fuel Forest View	4801 South Harlem	Forest View	IL	60402
T-37-IL-3365	Phillips 66 Decatur	266 E Shafer	Forsuth	IL	62535
T-36-IL-3320	Williams Pipeline Franklin	10601 Franklin Avenue	Franklin Park	IL	60131
T-37-IL-3362	Petroleum Fuel Granite City	2801 Rock Road	Granite City	IL	62040
T-37-IL-3369	Shell Oil Harristown	600 E Lincoln Memorial Pky	Harristown	IL	62537
T-37-IL-3353	Conoco Wood River	Route 3	Hartford	IL	62048
T-37-IL-3354	Hartford Wood River	900 North Delmar	Hartford	IL	62048
T-37-IL-3356	Clark Rfg Hartford	South Side Hawthorne	Hartford	IL	62048
T-43-IL-3729	Center Terminal Co - Hartford	1402 S Delmare	Hartford	IL	62048
T-37-IL-3371	Williams Pipe Line Heyworth	Rural Route Two	Heyworth	IL	61745
T-36-IL-3313	Phillips 66 Kankakee	275 North 2750 Road West	Kankakee	IL	60901
T-36-IL-3317	CITGO - Lemont	135th New Avenue	Lemont	IL	60439
T-36-IL-3375	Mobil Oil - Lockport	1290 High Road	Lockport	IL	60441
T-37-IL-3361	La Gloria Oil Norris City	Rural Route 2	Norris City	IL	62869
T-36-IL-3314	S T Services Peru	2830 West Market Street	Peru	IL	61354
T-37-IL-3372	Williams Pipe Line Menard Cty	Rural Route Three	Petersburg	IL	62675
T-37-IL-3360	Marathon Robinson	Rural Route One	Robinson	IL	62454
T-36-IL-3303	Amoco Oil Rochelle	100 East Standard Oil Road	Rochelle	IL	61068
T-36-IL-3306	Clark Rfg Rockford	1511 South Meridian Rd	Rockford	IL	61102
T-36-IL-3308	Marathon Oil Rockford	7312 Cunningham Road	Rockford	IL	61102
T-36-IL-3321	J M Sweeney Stickney	5200 West 41st Street	Stickney	IL	60650
T-36-IL-3309	Marathon Willow Springs	7600 LaGrange Road	Willow Springs	IL	60480
T-37-IL-3351	Amoco Oil Wood River	335 South Old St Louis Rd	Wood River	IL	62095
T-35-IN-3201	Amoco Oil Brookston	11555 Rt. 43	Brookston	IN	47923
T-35-IN-3206	Ashland Clarksville	214 Center Street	Clarksville	IN	47124
T-35-IN-3215	Crown Central Petro - Clermont	9323 West 30th	Clermont	IN	46234
T-35-IN-3226	Phillips 66 Clermont	3230 N Raceway Road	Clermont	IN	46234
T-35-IN-3227	S T Services Clermont	3350 N Raceway Rd	Clermont	IN	46234
T-35-IN-3209	CITGO East Chicago	2500 East Chicago Ave	East Chicago	IN	46312
T-35-IN-3225	Phillips 66 East Chicago	400 East Columbus Dr	East Chicago	IN	46312
T-35-IN-3242	Safety-Kleen Oil Recovery Co.	601 Riley Road	East Chicago	IN	46312
T-35-IN-3245	Conrail Inc.- Elkart Terminal	2600 W. Lusher Ave.	Elkhart	IN	46516
T-35-IN-3207	Ashland Evansville	2500 Broadway	Evansville	IN	47712
T-35-IN-3213	ITAPCO Evansville Terminal Inc	2630 Broadway	Evansville	IN	47712
T-35-IN-3203	Amoco Oil Granger	12694 Adams Rd.	Granger	IN	46530
T-35-IN-3202	Clark Rfg-Hammond	1020 141st St	Hammond	IN	46320
T-35-IN-3218	Marathon Hammond	4206 Columbia Avenue	Hammond	IN	46327
T-35-IN-3224	Mobil Oil Hammond	1527 141th Street	Hammond	IN	46327
T-35-IN-3228	Shell Oil Hammond	2400 Michigan St	Hammond	IN	46320
T-35-IN-3244	Indiana Harbor Belt Railroad	2721 - 161st St.	Hammond	IN	46323
T-35-IN-3208	Ashland Huntington	4648 N Meridian Road	Huntington	IN	46750
T-35-IN-3210	CITGO Huntington	4393 N Meridian Rd US 24	Huntington	IN	46750
T-35-IN-3211	Gladieux T & M Huntington	4757 US 24 E	Huntington	IN	46750
T-35-IN-3231	Sun Huntington	4691 N Meridian St	Huntington	IN	46750
T-35-IN-3234	Lassus Bros Huntington	4413 North Meridian Rd	Huntington	IN	46750
T-35-IN-3204	Amoco Oil Indianpolis	2500 N Tibbs Avenue	Indianapolis	IN	46222
T-35-IN-3217	Clark Rfg Clermont	W 30th St PO Box 34175	Indianapolis	IN	46234
T-35-IN-3219	Marathon Indianapolis	4955 Robison Rd	Indianapolis	IN	46268
T-35-IN-3222	Marathon Speedway	1304 Olin Ave	Indianapolis	IN	46222
T-35-IN-3230	Shell Oil Zionsville	5405 W 96th St.	Indianapolis	IN	46268
T-35-IN-3233	Center Terminal Co-Indianapoli	10833 East County Rd 300 North	Indianapolis	IN	46234
T-35-IN-3238	Indianapolis Terminaling Co	9410 E County Rd 300N	Indianapolis (CL)	IN	46234
T-35-IN-3241	Laketon Refinery	2784 W. Luken Rd.	Laketon	IN	46147
T-35-IN-3237	CountryMark Switz City	State Road 54 East	Linton	IN	47441
T-35-IN-3214	CountryMark Mount Vernon	1200 Refinery Road	Mount Vernon	IN	47620
T-35-IN-3220	Marathon Mount Vernon	Old State Rd 69 South	Mount Vernon	IN	47620
T-35-IN-3239	Mt Vernon Terminal Indian Ref	300 Old Hwy 69 South	Mount Vernon	IN	47620
T-35-IN-3221	Marathon Muncie	2100 East State Road 28	Muncie	IN	47303
T-35-IN-3229	Shell Oil Muncie	2000 E State Rd 28	Muncie	IN	47302
T-35-IN-3212	ITAPCO Kentuckiana Terminal In	20 Jackson St	New Albany	IN	47150
T-35-IN-3232	TEPPCO Princeton	Highway 64 West, RR 1	Oakland City	IN	47660
T-35-IN-3236	CountryMark Peru	Highway 24 West	Peru	IN	46970
T-35-IN-3243	Conrail Inc.-Avon Diesel Term	491 S. County Road 800 E.	Plainfield	IN	46168
T-35-IN-3216	Crown Central Petro - Seymour	9780 N US Hwy 31	Seymour	IN	47274
T-35-IN-3246	Transmontaigne - South Bend	20630 W. Ireland Rd.	South Bend	IN	46614
T-35-IN-3235	CountryMark Jolietville	17710 Mule Barn	Westfield	IN	46074
T-35-IN-3205	Amoco Oil Whiting	2530 Indianapolis Blvd	Whiting	IN	46394
T-48-KS-3650	Total Petroleum Arkansas City	1400 South M Street	Arkansas City	KS	67005
T-48-KS-3651	Farmland Ind Coffeyville	North & Linden Streets	Coffeyville	KS	67337
T-48-KS-3652	Kaneb Pipe Line Concordia	Route 1	Delphos	KS	67436
T-48-KS-3654	Texaco El Dorado	South Haverhill Road	El Dorado	KS	67042
T-48-KS-3655	Chase Pipeline Great Bend	Hwys 56 & 156 4 mi east of GB	Great Bend	KS	67530

TCN	Terminal Name	Address	City	State	Zip
T-48-KS-3656	Kaneb Pipe Line Hutchison	3300 East Avenue G	Hutchison	KS	67501
T-48-KS-3658	Sinclair Pipeline Kansas City	3401 Fairbanks Avenue	Kansas City	KS	66106
T-48-KS-3659	Williams Pipeline Kansas City	401 East Donovan Road	Kansas City	KS	66115
T-48-KS-3660	National Coop McPherson	2000 South Main Street	McPherson	KS	67460
T-48-KS-3661	Williams Pipe Line Olathe	13745 West 135th Street	Olathe	KS	66062
T-48-KS-3662	Farmland Phillipsburg	Hwy 183 N	Phillipsburg	KS	67661
T-48-KS-3663	S T Services Salina	West State Street & I-35	Salina	KS	67401
T-48-KS-3664	Chase Pipeline Scott City	Junction Highways 83 & 4	Scott City	KS	67871
T-48-KS-3666	Amoco Oil Valley Center	7452 N Meridian	Valley Center	KS	67147
T-48-KS-3665	Williams Pipe Line Topeka	US Hwy 75 RFD 1	Wakarusa	KS	66546
T-48-KS-3667	Williams Pipe Line Wathena	Hwy 36 1 mile East of Wathena	Wathena	KS	66090
T-48-KS-3669	Williams Pipe Line-Wichita	1100 East 21st Street	Wichita	KS	67214
T-48-KS-3670	Conoco Wichita	8001 Oak Knoll Road	Wichita	KS	67207
T-48-KS-3671	Phillips Pipeline Wichita	2400 East 37th Street North	Wichita	KS	67219
T-61-KY-3261	B P Oil Bromley	409 River Road	Bromley	KY	41016
T-61-KY-3262	Ashland Catlettsburg	Old St Rt 23	Catlettsburg	KY	41129
T-61-KY-3263	Ashland Covington	230 East 33rd Street	Covington	KY	41015
T-61-KY-3264	ITAPCO Greater Cincinnati Term	700 River Road	Covington	KY	41017
T-61-KY-3265	Henderson Terminaling	2321 Old Geneva Road	Henderson	KY	42420
T-61-KY-3279	ITAPCO-Henderson Terminal Inc.	2633 Sunset Lane	Henderson	KY	42420
T-61-KY-3266	Ashland Lexington	1770 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3267	Chevron USA Lexington	1750 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3268	Ashland Louisville	4510 Algonquin Parkway	Louisville	KY	40211
T-61-KY-3269	B P Oil Louisville	SW Parkway & Gibson Lane	Louisville	KY	40211
T-61-KY-3270	Chevron USA Louisville	4401 Bells Lane	Louisville	KY	40211
T-61-KY-3271	ITAPCO Louisville	4510 Bells Lane	Louisville	KY	40211
T-61-KY-3272	Marathon Oil Louisville	3920 Kramers Lane	Louisville	KY	40216
T-61-KY-3273	Sun Louisville	7800 Cane Run Road	Louisville	KY	40258
T-61-KY-3274	CITGO - Louisville	4724 Camp Ground Road	Louisville	KY	40216
T-61-KY-3280	Southern States Coorperative	150 Coast Guard Lane	Owensboro	KY	42302
T-61-KY-3283	Itapco - Owensboro Terminal Co	900 Pleasant Valley Road	Owensboro	KY	42302
T-61-KY-3276	Ashland Paducah	Highway 62 & Ashland Road	Paducah	KY	42003
T-61-KY-3278	ITAPCO Paducah Terminal Inc.	233 Elizabeth St	Paducah	KY	42001
T-61-KY-3284	Itapco Riverway Terminal Inc.	1350 South 3rd Street	Paducah	KY	42003
T-62-KY-2244	ITAPCO- Igert -Paducah	2000 So. 4th St.	Paducah	KY	42003
T-61-KY-3281	Somerset Refinery Somerset	600 Monticello Street	Somerset	KY	42502
T-72-LA-2351	Chevron USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2353	Exxon Co USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2358	Exxon USA Baton Rouge	3329 Scenic Highway	Baton Rouge	LA	70805
T-72-LA-2350	B P Oil Bell Chase	12 Mile South Hwy 23	Bell Chase	LA	.....
T-72-LA-2382	Paktank Corp Westwego	106 Bridge City Avenue	Bridge City	LA	70094
T-72-LA-2360	Mobil Oil Chalmette	1700 Paris Rd Gate 50	Chalmette	LA	70043
T-72-LA-2362	Kerr-McGee Cotton Valley	Highway 7 South	Cotton Valley	LA	71018
T-72-LA-2388	Calvmet Lubricants-Cotton Vall	U. S. Hwy 371 South	Cotton Valley	LA	71018
T-72-LA-2383	Phibro Marine Fuels	7168 Shrimpers Row	Dulac	LA	70353
T-72-LA-2357	Chevron USA Baton Rouge	1315 Mengel Road	East Baton Rouge	LA	70807
T-72-LA-2363	Marathon Oil Garyville	Highway 61	Garyville	LA	70051
T-72-LA-2384	Phibro Marine Fuel Gretna	1125 Fourth St	Gretna	LA	.....
T-72-LA-2386	Goldline Refinery	11499 Plant Road	Jennings	LA	70546
T-72-LA-2365	Shell Oil Kenner	143 Firehouse Drive	Kenner	LA	70062
T-72-LA-2366	Phibro Energy USA Krotz Spring	Highway 105 South	Krotz Springs	LA	70750
T-72-LA-2367	Calcasieu Lake Charles	West End of Tank Farm Road	Lake Charles	LA	70606
T-72-LA-2368	CITGO Lake Charles	Cities Serv Hwy & LA Hwy 108	Lake Charles	LA	70601
T-72-LA-2370	Dubach Gas Co Claiborne Plant	Highway 2 PO Box 170	Lisbon	LA	71048
T-72-LA-2373	Texaco - Marrero	Barataria & River Road	Marrero	LA	70072
T-72-LA-2371	Murphy Oil USA Meraux	2501 East St Bernard Hwy	Meraux	LA	70075
T-72-LA-2372	Mobil Oil Morgan City	1000 Youngs Road	Morgan City	LA	70380
T-72-LA-2374	GATX Terminals Norco	1601 River Road	Norco	LA	70079
T-72-LA-2375	Chevron USA Opelousas	Highway 182 South	Opelousas	LA	70571
T-72-LA-2359	Petroleum Fuel Baton Rouge	995 Earnest Wilson Road	Port Allen	LA	70767
T-72-LA-2376	Placid Refining Co Port Allen	1940 Louisiana Hwy One North	Port Allen	LA	70767
T-72-LA-2389	Calvmet Lubricants-Princeton	10234 Hwy 157	Princeton	LA	71067
T-72-LA-2378	Pennzoil Product Co Shreveport	3333 Midway PO Box 3099	Shreveport	LA	71133
T-72-LA-2391	Petro-United Term Sunshine	1725 Highway 75	Sunshine	LA	70780
T-72-LA-2361	Star Enterprise Convent	LA Highways 44 N of Sunshine	Union	LA	70723
T-72-LA-2381	Conoco Westlake	1980 Old Spanish Trail	Westlake	LA	70669
T-72-LA-2390	ST Services Westwego	660 La Bauve Drive	Westwego	LA	70094
T-04-MA-1172	Global Petroleum Corp	30 Pine St.	Bedford	MA	02740
T-04-MA-1154	Mobil Oil East Boston	467 Chelsea Street	Boston	MA	02128
T-04-MA-1155	CITGO East Braintree	385 Quincy Ave	Braintree	MA	02184
T-04-MA-1152	Chelsea Terminal L/P	11 Broadway	Chelsea	MA	.....
T-04-MA-1153	Gulf Oil Chelsea	123 Eastern Ave.	Chelsea	MA	02150

TCN	Terminal Name	Address	City	State	Zip
T-04-MA-1156	Exxon USA Everett	52 Beachum Street	Everett	MA	02149
T-04-MA-1157	Shell Oil Fall River	One New Street	Fall River	MA	02720
T-04-MA-1173	Harbor Fuel Oil Corp	15 Sparks Ave.	Nantucket	MA	02554
T-04-MA-1176	Sprague Energy Corp	728 Southern Artery	Quincy	MA	02169
T-04-MA-1160	B P Oil Revere	41 Lee Burbank Highway	Revere	MA	02151
T-04-MA-1161	Global Petroleum Corp.	222 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1162	Global Petroleum Revere	140 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1163	Northeast Petroleum Salem	25 Derby Street	Salem	MA	01970
T-04-MA-1164	Northeast Petroleum Sandwich	3 Coast Guard Road	Sandwich	MA	02563
T-04-MA-1165	Coastal Oil NE South Boston	900 E First Street	South Boston	MA	02128
T-04-MA-1151	L E Belcher Springfield	615 St James Ave	Springfield	MA	01109
T-04-MA-1166	Coastal Oil NE Inc	Rocus St.	Springfield	MA	01101
T-04-MA-1168	Mobil Oil Springfield	145 Albany Street	Springfield	MA	01105
T-04-MA-1177	Springfield Terminals Inc	86 Robbins Road	Springfield	MA	01101
T-04-MA-1178	Ultramar Energy Inc.	627 Cottage St.	Springfield	MA	01101
T-04-MA-1179	Wyatt Energy Inc	1053 Page Blvd	Springfield	MA	01104
T-04-MA-1175	R M Packer Co. Inc	Beach Rd.	Vine Havn	MA	02568
T-04-MA-1170	Sprague Energy Weymouth	5 Bridge St	Weymouth	MA	02191
T-52-MD-1570	S T Services Andrews AFB	c/o 89th Supply Squadron/LGSS	Andrews AFB	MD	20331
T-52-MD-1550	Amerada Hess Baltimore	6200 Pennington Avenue	Baltimore	MD	21226
T-52-MD-1552	TOSCO/Bayway - Baltimore	2155 Northbridge Ave	Baltimore	MD	21226
T-52-MD-1554	Petroleum Fuel & Terminal	5101 Erdman Avenue	Baltimore	MD	21205
T-52-MD-1557	Exxon USA Baltimore	3801 Boston Street	Baltimore	MD	21224
T-52-MD-1558	Mobil Oil Baltimore	3445 Fairfield Road	Baltimore	MD	21226
T-52-MD-1559	Petroleum Fuel Baltimore	1622 South Clinton Street	Baltimore	MD	21224
T-52-MD-1561	Shell Oil Baltimore	2400 Petrolia Avenue	Baltimore	MD	21226
T-52-MD-1562	CITGO - Baltimore	2201 Southport Avenue	Baltimore	MD	21226
T-52-MD-1563	Stratus Petroleum Baltimore	3100 Vera Street	Baltimore	MD	21226
T-52-MD-1551	Amoco Oil Baltimore	801 East Ordance Rd	Curtis Bay	MD	21226
T-52-MD-1565	S T Services - Piney Point	17877 Piney Point Road	Piney Point	MD	20674
T-52-MD-1567	Cato Oil Salisbury	1030 Marine Road	Salisbury	MD	21801
T-52-MD-1568	Maritank Maryland Inc.	1134 Marine Road	Salisbury	MD	21801
T-01-ME-1000	Mobil Oil Bangor	730 Lower Main Street	Bangor	ME	04401
T-01-ME-1011	Webber Oil Bangor	700 Main St	Bangor	ME	04401
T-01-ME-1013	Webber Tanks Brewer	225 South Main	Brewer	ME	04412
T-01-ME-1012	Webber Tanks Buckport	Drawer CC River Road	Bucksport	ME	04416
T-01-ME-1002	Coldbrook Energy, Inc.	809 Main Road No	Hampden	ME	04044
T-01-ME-1006	Irving Oil Searsport	Station Ave	Searsport	ME	04974
T-01-ME-1001	Koch Fuels South Portland	5 Central Avenue	South Portland	ME	04106
T-01-ME-1003	B P Oil South Portland	59 Main Street	South Portland	ME	04106
T-01-ME-1004	Mobil Oil Portland	170 Lincoln Street	South Portland	ME	04106
T-01-ME-1007	Getty Terminal South Portland	27 Main Street	South Portland	ME	04102
T-01-ME-1008	Gulf Oil South Portland	175 Front St	South Portland	ME	04106
T-01-ME-1009	Northeast Petroleum S Portland	One Clarks Road	South Portland	ME	04106
T-01-ME-1010	Star Enterprise South Portland	102 Mechanic Street	South Portland	ME	04106
T-38-MI-3031	Total Petroleum Alma	1925 East Superior St	Alma	MI	48802
T-38-MI-3000	Amoco Oil Bay City	411 Tiernan Road	Bay City	MI	48707
T-38-MI-3032	Total Petroleum Bay City	1806 Marquette	Bay City	MI	48706
T-38-MI-3036	CITGO - Bay City	5011 Wilder Road	Bay City	MI	48706
T-38-MI-3038	Crystal Refining Company	801 North Williams	Carson City	MI	48811
T-38-MI-3001	Amoco Oil Cheyboygan	311 Coast Guard Drive	Cheyboygan	MI	49721
T-38-MI-3021	Mobil Oil Dearborn	6011 Wyoming	Dearborn	MI	48126
T-38-MI-3015	Marathon Detroit	12700 Toronto St	Detroit	MI	48217
T-38-MI-3025	Shell Oil Detroit	700 South Deacon	Detroit	MI	48217
T-38-MI-3030	Sun River Rouge	500 South Dix Avenue	Detroit	MI	48217
T-38-MI-3008	CITGO Ferrysburg	524 Third Street	Ferrysburg	MI	49409
T-38-MI-3013	Shell Oil - Ferrysburg	17806 North Shore Drive	Ferrysburg	MI	49409
T-38-MI-3022	Mobil Oil Flint	G5340 North Dort Highway	Flint	MI	48505
T-38-MI-3041	Quality Oil Company	630 Ottawa Avenue	Holland	MI	49423
T-38-MI-3009	CITGO Jackson	2001 Morrill Rd	Jackson	MI	49201
T-38-MI-3017	Marathon Jackson	2090 Morrill Rd	Jackson	MI	49201
T-38-MI-3027	Shell Oil Jackson	2103 Morrill Rd	Jackson	MI	49201
T-38-MI-3033	Total Petroleum Lansing	6300 West Grand River	Lansing	MI	48906
T-38-MI-3043	Clark Rfg Marshall	12451 S Old US 27	Marshall	MI	49068
T-38-MI-3016	Marathon Flint	6065 North Dort Highway	Mt Morris	MI	48458
T-38-MI-3004	Amoco Oil Napoleon	6777 Brooklyn Road	Napoleon	MI	49261
T-38-MI-3010	CITGO Niles	2233 South Third	Niles	MI	49120
T-38-MI-3011	Marathon Niles	2140 South Third St	Niles	MI	49120
T-38-MI-3019	Marathon Oil Niles	2216 South Third Street	Niles	MI	49120
T-38-MI-3023	Mobil Oil Niles	2150 South Third Street	Niles	MI	49120
T-38-MI-3028	Shell Oil Niles	325 1/2 Fulkerson Rd.	Niles	MI	49120
T-38-MI-3020	Marathon N Muskegon	3005 Holton Rd	North Muskegon	MI	49445

TCN	Terminal Name	Address	City	State	Zip
T-38-MI-3039	Delta Fuels Of Michigan	40600 Grand River	Novi	MI	48375
T-38-MI-3029	Sun Owosso	4004 West Main Rd	Owosso	MI	48867
T-38-MI-3005	Amoco Oil River Rouge	205 Marion Street	River Rouge	MI	48218
T-38-MI-3034	Total Petroleum Romulus	28001 Citrin Drive	Romulus	MI	48174
T-38-MI-3037	CITGO - Romulus	29120 Wick Road	Romulus	MI	48174
T-38-MI-3006	Amoco Oil Taylor	8625 South Inkster Rd.	Taylor	MI	48180
T-38-MI-3007	B P Oil Taylor	24801 Ecorse Rd	Taylor	MI	48180
T-38-MI-3012	Cousins Petroleum Taylor	7965 Holland	Taylor	MI	48180
T-38-MI-3042	Ashland Detroit	22970 Ecorse Road	Taylor	MI	48180
T-38-MI-3044	Clark Rfg Taylor	8000 S Beech Daly Rd	Taylor	MI	48180
T-38-MI-3035	Total Petroleum Traverse City	13544 West Bay Shore Dr	Traverse City	MI	49684
T-38-MI-3024	Mobil Oil Woodhaven	20089 West Road	Woodhaven	MI	48183
T-41-MN-3412	Williams Pipe Line Alexandria	709 3rd Ave W	Alexandria	MN	56308
T-41-MN-3410	Murphy Oil-Esko	5746 Old Hwy 61	Esko	MN	55733
T-41-MN-3416	Williams Pipe Line Rochester	1331 Hwy 42 Southeast	Eyota	MN	55934
T-41-MN-3413	Williams Pipe Line Mankato	Rural Route Nine	Mankato	MN	56001
T-41-MN-3414	Williams Pipe Line Marshall	Route Four	Marshall	MN	56258
T-41-MN-3400	Amoco Oil Moorhead	1101 Southeast Main	Moorhead	MN	56560
T-41-MN-3406	Erickson Petroleum Newport	50 21st St	Newport	MN	55055
T-41-MN-3403	Amoco Oil Twin Cities	2288 West County Road C	Roseville	MN	55113
T-41-MN-3415	Williams Pipe Line Roseville	2451 W County Rd C	Roseville	MN	55713
T-41-MN-3401	Amoco Oil Sauk Centre	1 Mile W on County Rd 52	Sauk Centre	MN	56378
T-41-MN-3402	Amoco Oil Spring Valley	2 Miles East of U S 16	Spring Valley	MN	55975
T-41-MN-3407	Koch Pine Bend	Junction Highways 52 & 55	St Paul	MN	55164
T-41-MN-3408	Koch St Paul	778 Otto Avenue	St Paul	MN	55102
T-41-MN-3409	Mobil Oil St Paul	852 Hathaway	St Paul	MN	55102
T-41-MN-3411	CITGO - St Paul	747 Shepard Road	St Paul	MN	55102
T-41-MN-3404	Ashland Refinery St Paul	100 West Third Street	St Paul Park	MN	55071
T-41-MN-3418	ST Services Winona	1020 E. 2nd St.	Winona	MN	55987
T-41-MN-3405	Conoco Wrenshall	10 Broadway Street	Wrenshall	MN	55797
T-43-MO-3700	Conoco Belle	HCR 3	Belle	MO	65013
T-43-MO-3718	Williams Pipeline Springfield	Junction MM Rd & Hwy 60	Brookline	MO	65619
T-43-MO-3703	Ayers Oil Canton	Fourth & Grant	Canton	MO	63435
T-43-MO-3704	ITAPCO Missouri Terminal Inc.	1400 S Giboney	Cape Girardeau	MO	63701
T-43-MO-3706	Sinclair Pipeline Carrollton	S Main & 24 Business Route	Carrollton	MO	64633
T-43-MO-3728	Sinclair Oil Corp - Carrollton,RR4	Box 48	Carrollton	MO	64633
T-43-MO-3708	Williams Pipeline Columbia	Rural Route 1 Hwy 63 South	Columbia	MO	65201
T-43-MO-3702	Texon Terminals Corp	PO Box 637	Dexter	MO	63841
T-43-MO-3707	Williams Pipeline Carthage	2 mi South of Jasper on US 71	Jasper	MO	64755
T-43-MO-3709	Phillips 66 Jefferson City	2116 Idlewood	Jefferson City	MO	65109
T-43-MO-3711	Kerr-McGee LaGrange	905 North Main Street	LaGrange	MO	63448
T-43-MO-3712	Sinclair Pipeline Mexico	Highway 54 East	Mexico	MO	65265
T-43-MO-3713	Conoco Mount Vernon	US 66 New Highway 96	Mount Vernon	MO	65712
T-43-MO-3715	Sinclair Pipeline New Madrid	211 Water Street	New Madrid	MO	63869
T-43-MO-3716	Williams Pipeline Palmyra	6 mi North on Highway 61	Palmyra	MO	63461
T-43-MO-3710	Conoco Kansas City	6699 NW Riverpark Drive	Parkville	MO	64152
T-43-MO-3705	TEPPCO Cape Girardeau	Rural Route 2, Hwy N	Scott City	MO	63780
T-43-MO-3701	JD Streett St Louis	3800 S 1st St	St Louis	MO	63118
T-43-MO-3717	Kerr-McGee St Louis	4000 Koch Road	St Louis	MO	63129
T-43-MO-3719	J D Street River Plant	1 River Road	St Louis	MO	63125
T-43-MO-3725	Shell Oil St Louis	239 East Prairie	St Louis	MO	63147
T-43-MO-3726	Clark Rfg St Louis	4070 South First Street	St Louis	MO	63118
T-43-MO-3721	Williams Pipeline St Charles	4695 South Service Road	St Peter	MO	63376
T-43-MO-3720	Amoco Oil Sugar Creek	1000 North Sterling	Sugar Creek	MO	64054
T-64-MS-2400	Munro Petroleum Biloxi	540 Bayview Avenue	Biloxi	MS	39533
T-64-MS-2401	Chevron USA Collins	Old Highway 49 South	Collins	MS	39428
T-64-MS-2402	Exxon USA Collins	31 Kola Road	Collins	MS	39428
T-64-MS-2403	B P Oil Collins	First Avenue South	Collins	MS	39428
T-64-MS-2404	Shell Oil Collins	49So & Kola RD	Collins	MS	39428
T-64-MS-2405	Louis Dreyfus Collins	First Avenue South	Collins	MS	39428
T-64-MS-2406	Greenville Republic Terminal	310 Walthall Street	Greenville	MS	38701
T-64-MS-2408	ITAPCO Greenville Terminal Inc	208 Short Clay Street	Greenville	MS	38701
T-72-MS-2421	Delta Terminal - Greenville	2181 Harbor Front	Greenville	MS	38701
T-64-MS-2409	Southland Oil Lumberton	5 Mi North of Lumberton Hwy 11	Lumberton	MS	39455
T-64-MS-2410	Amoco Oil Meridan	181 65th Avenue	Meridian	MS	39307
T-64-MS-2412	CITGO Meridian	180 65th Avenue	Meridian	MS	39305
T-64-MS-2413	B P Oil Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2414	Star Enterprise Meridian	6540 N Frontage Rd	Meridian	MS	39301
T-64-MS-2415	Louis Dreyfus Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2416	Chevron USA Pascagola	Industrial Road State Hwy 611	Pascagoula	MS	39568
T-64-MS-2417	Amerada Hess Purvis	US Hwy 11	Purvis	MS	39475
T-64-MS-2418	Southland Oil Sandersville	2 mi N on Hwy 11 PO Drawer A	Sandersville	MS	39477

TCN	Terminal Name	Address	City	State	Zip
T-64-MS-2407	Barrett Refining Vicksburg	2222 Warrenton RD	Vicksburg	MS	39182
T-64-MS-2419	CITGO Vicksburg	1585 Haining Rd	Vicksburg	MS	39180
T-81-MT-4000	Conoco Billings	23rd & Fourth Ave South	Billings	MT	59107
T-81-MT-4007	Exxon USA Billings	Lockwood Frontage Rd	Billings	MT	59101
T-81-MT-4001	Conoco Bozeman	316 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4008	Exxon USA Bozeman	220 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4006	CENEX Glendive	P O Box 240	Glendive	MT	59330
T-81-MT-4002	Conoco Great Falls	1401 52nd North	Great Falls	MT	59405
T-81-MT-4011	Montana Refining Great Falls	1900 10th Street	Great Falls	MT	59403
T-81-MT-4003	Conoco Helena	3180 Highway 12 East	Helena	MT	59601
T-81-MT-4009	Exxon USA Helena	3120 Highway 12 Eaast	Helena	MT	59601
T-81-MT-4005	CENEX Laurel	P O Box 909	Laurel	MT	59044
T-81-MT-4004	Conoco Missoula	3330 Raser Drive	Missoula	MT	59802
T-81-MT-4010	Exxon USA Missoula	3350 Raser Drive	Missoula	MT	59801
T-56-NC-2027	Star Enterprise Raleigh	2232 Ten-Ten Road	Apex	NC	27502
T-56-NC-2000	Exxon USA Charlotte	6801 Freedom Drive	Charlotte	NC	28208
T-56-NC-2001	CITGO Charlotte	7600 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2003	Crown Central Charlotte	7720 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2005	Shell Oil Charlotte	6851 Freedom Drive	Charlotte	NC	28214
T-56-NC-2006	Williams Energy Ventures-Charl	7145 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2007	Star Enterprise Charlotte	410 Tom Sadler Road	Charlotte	NC	28130
T-56-NC-2026	Basis Petroleum Inc -Charlotte	7325 Old Mount Holly Road	Charlotte	NC	28214
T-56-NC-2009	Star Enterprise Fayetteville	992 Shaw Mill Road	Fayetteville	NC	28303
T-56-NC-2014	Exxon USA Greensboro	6907 West Market Street	Greensboro	NC	27409
T-56-NC-2010	Amerada Hess Greensboro	6907B West Market Street	Greensboro	NC	27409
T-56-NC-2011	Amoco Oil Greensboro	7109 West Market Street	Greensboro	NC	27409
T-56-NC-2012	Ashland Greensboro	6311 Burnt Poplar Road	Greensboro	NC	27409
T-56-NC-2015	Triad Terminal	6376 Burnt Poplar Rd	Greensboro	NC	27409
T-56-NC-2019	Apex Oil Co - Greensboro	6900 West Market St	Greensboro	NC	27409
T-56-NC-2020	Williams Energy Ventures-Green	115 Chimney Rock Road	Greensboro	NC	27409
T-56-NC-2021	Star Enterprise Greensboro	101 S Chimney Rock Rd	Greensboro	NC	27419
T-56-NC-2022	Louis Dreyfus Greensboro	6801 West Market Street	Greensboro	NC	27409
T-56-NC-2002	Marathon Oil Charlotte	8035 Mt Holly Rd	Paw Creek	NC	28130
T-56-NC-2004	Phillips 66 Charlotte	502 Tom Sadler Road	Paw Creek	NC	28130
T-56-NC-2008	Louis Dreyfus Charlotte	7401 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2023	Amerada Hess Paw Creek	7615 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2024	Amoco Oil Paw Creek	7924 Mt Holly Rd	Paw Creek	NC	28130
T-56-NC-2018	Triad Terminal Selma	2200 Oil Terminal Rd	Selma	NC	27576
T-56-NC-2025	Crown Central Selma	2999 W Oak St	Selma	NC	27576
T-56-NC-2028	Amerada Hess Selma	West State Road 1929	Selma	NC	27576
T-56-NC-2029	B P Oil Selma	Buffalo Road	Selma	NC	27576
T-56-NC-2030	CITGO Selma	State Hwy 1003 and Oak St Ext	Selma	NC	27576
T-56-NC-2031	Exxon USA Selma	2555 West Oak Street	Selma	NC	27576
T-56-NC-2033	Basis Petroleum Inc - Selma	4383 Buffaloe Road	Selma	NC	27576
T-56-NC-2034	Phillips Petro Selma	4086 Buffalo Road	Selma	NC	27576
T-56-NC-2036	Williams Energy Ventures-Selma	4414 Buffalow Road	Selma	NC	27576
T-56-NC-2037	Amerada Hess Wilmington	1312 S Front Street	Wilmington	NC	28401
T-56-NC-2039	CTI of North Carolina Inc	1002 S Front Street	Wilmington	NC	28402
T-56-NC-2041	Koch Refining N Wilmington	3325 River Road	Wilmington	NC	28412
T-56-NC-2042	Koch Refining S Wilmington	3334 River Rd	Wilmington	NC	28412
T-56-NC-2043	Apex Oil Co. - Wilmington	3314 River Road	Wilmington	NC	28403
T-45-ND-3500	Williams Pipeline Grand Forks	3930 Gateway Drive	Grand Forks	ND	58203
T-45-ND-3502	Amoco Oil Jamestown	10 Mi West on I-94 Stand Spur	Jamestown	ND	58401
T-45-ND-3503	Kaneb Pipe Line Jamestown	3790 Hwy 281 SE	Jamestown	ND	58401
T-45-ND-3505	Amoco Oil Mandan	North Mandan Avenue	Mandan	ND	58554
T-45-ND-3504	CENEX Minot	700 Second Street SW	Minot	ND	58701
T-45-ND-3501	Williams Pipe Line Fargo	902 Main Avenue East	West Fargo	ND	58078
T-47-NE-3600	Kaneb Pipe Line Columbus	Highway 30	Columbus	NE	68601
T-47-NE-3602	Williams Pipe Line Doniphan	12275 South U S Hwy 281	Doniphan	NE	68832
T-47-NE-3601	Kaneb Pipe Line Geneva	U S Highway 81	Geneva	NE	68361
T-47-NE-3606	Kaneb Pipe Line Norfolk	Highway 81	Norfolk	NE	68701
T-47-NE-3607	Kaneb Pipe Line North Platt	Rural Route Four	North Platte	NE	69101
T-47-NE-3608	Williams Pipe Line Omaha	Seventh & Yates Street	Omaha	NE	68103
T-47-NE-3610	Kaneb Pipe Line Osceola	Rural Route 1	Osceola	NE	68651
T-47-NE-3603	Conoco Lincoln Products	Route 1	Roca	NE	68430
T-47-NE-3605	Williams Pipe Line Lincoln	2000 Saltillo Road	Roca	NE	68430
T-47-NE-3609	Conoco Pipeline Sidney	Rural Route 1	Sidney	NE	69162
T-02-NH-1050	Sprague Energy Newington	Spaulding Turnpike	Newington	NH	
T-02-NH-1054	Sprague Energy Portsmouth	Adjacent to Interstate 95	Portsmouth	NH	03801
T-02-NH-1056	Northeast Petroleum Portsmouth	50 Preble Way	Portsmouth	NH	03801
T-22-NJ-1500	Amerada Hess Bayonne	Lower Hook Road	Bayonne	NJ	07002
T-22-NJ-1501	Coastal Oil Bayonne	Foot of East Fifth Street	Bayonne	NJ	07002

TCN	Terminal Name	Address	City	State	Zip
T-22-NJ-1505	Amerada Hess Bogota	238 West Fort Lee Road	Bogota	NJ	07503
T-22-NJ-1506	Amoco Oil Carteret Terminal	760 Roosevelt Avenue	Carteret	NJ	07008
T-22-NJ-1508	Amerada Hess Edgewater	615 River Road	Edgewater	NJ	07020
T-22-NJ-1511	Koch Fuels Gloucester City	Across Delaware River from PA	Gloucester City	NJ	08030
T-22-NJ-1512	Tosco Tremley PT	Foot of Southwood Ave	Linden	NJ	07036
T-22-NJ-1513	CITGO Linden	4801 South Wood Avenue	Linden	NJ	07036
T-22-NJ-1514	Bayway Refining Co	1100 US Highway One	Linden	NJ	07036
T-22-NJ-1515	Gulf Oil Linden	2600 Marshes Dock Road	Linden	NJ	07036
T-22-NJ-1516	Mobil Oil Linden	South Wood Avenue	Linden	NJ	07036
T-22-NJ-1502	Amerada Hess Newark Delanny	1111 Delanny St	Newark	NJ	07105
T-22-NJ-1518	Amerada Hess Newark Doremus	148-182 Doremus Avenue	Newark	NJ	07105
T-22-NJ-1520	Getty Terminal Newark	86 Doremus Rd	Newark	NJ	07105
T-22-NJ-1521	Star Enterprise Newark	909 Delaney Street	Newark	NJ	07105
T-22-NJ-1522	Stratus Petroleum Newark	678 Doremus Ave	Newark	NJ	07105
T-22-NJ-1523	Sun Newark	436 Doremus Avenue	Newark	NJ	07105
T-22-NJ-1524	B P Oil Paulsboro	303 Mantua Avenue	Paulsboro	NJ	08066
T-22-NJ-1525	GATX Terminals Paulsboro	3rd St & Billingsport Road	Paulsboro	NJ	08066
T-22-NJ-1526	Mobil Oil Paulsboro	North Delaware Street	Paulsboro	NJ	08066
T-22-NJ-1528	Amerada Hess Pennsauken	One Derousse Avenue	Pennsauken	NJ	08110
T-22-NJ-1533	CITGO Pettys Island	Route 36 & Deleware River	Pennsauken	NJ	08110
T-22-NJ-1530	Amerada Hess Perth Amboy	State Street	Perth Amboy	NJ	08861
T-22-NJ-1531	Chevron USA Perth Amboy	1200 State Street	Perth Amboy	NJ	08861
T-22-NJ-1545	Amerada Hess Woodbridge	Smith Street & Convery Blvd	Perth Amboy	NJ	08861
T-22-NJ-1534	Sun Piscataway	1028 Stelton Road	Piscataway	NJ	08854
T-22-NJ-1519	B P Oil Newark	Building 350 Coastel St	Port Newark	NJ	07114
T-22-NJ-1535	Amerada Hess Port Reading	Cliff Road	Port Reading	NJ	07064
T-22-NJ-1536	Amerada Hess Secaucus	35 Meadowlands Parkway	Secaucus	NJ	07094
T-22-NJ-1537	Shell Oil - Sewaren	115 State Street	Sewaren	NJ	07077
T-22-NJ-1538	Shell Oil Sewaren	111 State Street	Sewaren	NJ	07077
T-22-NJ-1544	Coastal Eagle Point Westville	U S Route 130	South Westville	NJ	.....
T-22-NJ-1540	Gulf Oil Thorofare	358 Kings Highway	Thorofare	NJ	08086
T-22-NJ-1542	Mobil Oil Trenton	2785 Lamberton Road	Trenton	NJ	08611
T-22-NJ-1547	Duck Island Terminal Inc.	1463 Lamberton Road	Trenton	NJ	08677
T-22-NJ-1548	SLF, Inc. T/a Consumers Oil	1473 Lamberton Road	Trenton	NJ	08611
T-85-NM-4259	S T Services Alamogordo	6026 Hwy 54 South	Alamogordo	NM	88310
T-85-NM-4251	Chevron USA Albuquerque	3200 Broadway SE within city	Albuquerque	NM	87105
T-85-NM-4252	Conoco Albuquerque	4036 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4253	Diamond Albuquerque	Route Nine 6348 Street 30	Albuquerque	NM	87105
T-85-NM-4254	Phillips 66 Albuquerque	6356 State Road 47 S W	Albuquerque	NM	87105
T-85-NM-4255	Giant Industries Albuquerque	3209 Broadway Southeast	Albuquerque	NM	87103
T-85-NM-4256	Navajo Refining Artesia	US Highway 82	Artesia	NM	88210
T-85-NM-4257	Giant Industries - Bloomfield	50 County Road 4990	Bloomfield	NM	87413
T-85-NM-4258	Giant Refining Ciniza	I-40 17 mi East of Gallup	Gallup	NM	87301
T-85-NM-4260	Diamond Tucumcari	3 Mi East on Hwy 54	Tucumcari	NM	88401
T-88-NV-4350	Calnev Pipe Line Las Vegas	5049 N Sloan	Las Vegas	NV	89114
T-88-NV-4359	Rebel Oil Las Vegas	1900 West Sahara	Las Vegas	NV	89102
T-88-NV-4353	SFPP LP Sparks	301 Nugget Avenue	Sparks	NV	89431
T-88-NV-4354	Time Oil Sparks	525 B Street	Sparks	NV	89431
T-88-NV-4358	Berry-Hinckley Terminal, Inc.	275 Nugget Ave	Sparks	NV	89431
T-88-NV-4360	Berry Hinckley Terminal-Sparks	147 South Stanford Way	Sparks	NV	89431
T-14-NY-1400	Agway Petroleum Albany	184 Port Rd	Albany	NY	12202
T-14-NY-1401	Cibro Petroleum Prod Albany	Port of Albany	Albany	NY	12202
T-14-NY-1403	Mobil Oil Albany	50 Church Street	Albany	NY	12202
T-16-NY-1450	Stratus Petro Baldwinsville	7431 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1492	Alaskan Oil Co - Baldwinsville	7433 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1471	Griffith Oil Big Flats	3351 Rt. 252	Big Flats	NY	14814
T-16-NY-1456	Agway Petroleum Corp Brewerton	Rt 37 River Road	Brewerton	NY	13029
T-13-NY-1352	Castle Port Morris Terminals	290 Locust Avenue	Bronx	NY	10454
T-13-NY-1353	Stuyvesant Fuel Service-Bronx	1040 East 149th Street	Bronx	NY	10455
T-13-NY-1354	Getty Terminal Bronx	4301 Boston Post Road	Bronx	NY	10466
T-13-NY-1357	Fred M Schildwachter & Sons	1400 Ferris Place	Bronx	NY	10461
T-11-NY-1301	Amoco Oil Brooklyn	125 Apollo Street	Brooklyn	NY	11222
T-11-NY-1302	Metro Terminals Brooklyn	498 Kingsland Avenue	Brooklyn	NY	11222
T-11-NY-1304	Shell Oil Brooklyn	25 Paidge Ave.	Brooklyn	NY	11222
T-11-NY-1308	Amerada Hess Brooklyn	722 Court Street	Brooklyn	NY	11231
T-11-NY-1313	Star Enterprise Brooklyn	One North 12th Street	Brooklyn	NY	11211
T-11-NY-1316	Bayside Fuel Oil Depot Corp	510 Sackett Street	Brooklyn	NY	11214
T-11-NY-1321	Metro Fuel Oil Corp-Brooklyn	500 Kingsland Avenue	Brooklyn	NY	11222
T-11-NY-1323	Ditmas Oil Associates Inc	364 Maspeth Avenue	Brooklyn	NY	11211
T-16-NY-1458	Mobil Oil Buffalo	625 Elk St.	Buffalo	NY	14210
T-16-NY-1496	Kingston Oil Supply- Catskill	End Lower Main St.	Catskill	NY	12414
T-11-NY-1460	Mobil Oil Cold Spring Harbor	95 Shore Road	Cold Spring	NY	11724

TCN	Terminal Name	Address	City	State	Zip
T-11-NY-1319	Tosco Pipeline East Setauket	19 Bell Meade Road	East Setauket	NY	11733
T-11-NY-1306	Coastal Oil Flushing	31-70 College Point Blvd	Flushing	NY	11354
T-16-NY-1462	Agway Petroleum Corp Geneva	West River Road	Geneva	NY	14456
T-14-NY-1402	Citgo Petroleum Corp Glenmont	495 River Road	Glenmont	NY	12077
T-14-NY-1405	Sears Petroleum & Transport Co	Route 144 552 River Road	Glenmont	NY	12077
T-11-NY-1309	Mobil Oil Glenwood Landing	Shore & Glenwood Rd	Glenwood Landing	NY	11547
T-13-NY-1364	Commander Oil Corporation	240 East Shore Road	Great Neck	NY	11022
T-14-NY-1406	Stratus Petroleum Green Isle	Center Island	Green Island	NY	12181
T-11-NY-1307	Castle Astoria	500 Mamaroneck Avenue	Harrison	NY	10528
T-16-NY-1498	Riverstar - Highland	42 River Rd.	Highland	NY	12528
T-11-NY-1310	Tosco Pipeline Holtsville	586 Union Ave	Holtsville	NY	11742
T-11-NY-1305	Mobil Oil Inwood	464 Doughty Blvd	Inwood	NY	11696
T-11-NY-1314	Eagle Oil Co-Inwood	One Sheridan Blvd	Inwood	NY	11696
T-11-NY-1328	Amoco Oil Co. - Inwood	One Bay Boulevard	Inwood	NY	11559
T-16-NY-1455	Sun Binghamton	4324 Watson Boulevard	Johnson City	NY	13790
T-16-NY-1497	Walter Davenport & Son	625 Sawkill Rd.	Kingston	NY	12401
T-11-NY-1324	Carbo Industries Inc	1 Bay Blvd	Lawerence	NY	11559
T-11-NY-1312	Star Enterprise Inwood	74 East Avenue	Lawrence	NY	11559
T-11-NY-1311	Getty Terminal-Long Island	30-23 Greenpoint Ave.	Long Island City	NY	11101
T-16-NY-1463	Agway Petroleum Corp Marcy	9586 River Road	Marcy	NY	13403
T-16-NY-1464	Amerada Hess Marcy	9570 River Rd.	Marcy	NY	13403
T-16-NY-1465	Bray Terminals Marcy	River Road	Marcy	NY	13403
T-16-NY-1487	Sears Oil Utica	9788 River Road	Marcy	NY	13403
T-16-NY-1493	Mohawk Valley Oil Co- Marcy	9678 River Road	Marcy	NY	13403
T-14-NY-1409	Agway Petroleum Corp Milton	Sands Ave	Milton	NY	12547
T-13-NY-1356	Amoco Oil Mount Vernon	40 Canal St	Mount Vernon	NY	10550
T-13-NY-1361	West Vernon Petroleum Corp	701 S Columbus Ave	Mt Vernon	NY	10550
T-14-NY-1414	Sun Refining New Windsor	49 River Road	New Windsor	NY	12553
T-14-NY-1411	Coastal Oil Newburgh	Hudson River	Newburgh	NY	12551
T-14-NY-1413	Mobil Oil Newburgh	20 River Road	Newburgh	NY	12551
T-14-NY-1421	Amerada Hess Roseton	590 River Road	Newburgh	NY	12250
T-16-NY-1499	Warex Terminals Corp-Newburgh	1 South Water Street	Newburgh	NY	12550
T-11-NY-1315	RAD Operating Oceanside	7 Hampton Road	Oceanside	NY	11572
T-13-NY-1358	Meenan Peekskill	Roa Hook rd	Peekskill	NY	10566
T-11-NY-1467	Northville Industries Plainvie	Off Long Island Expressway	Plainview	NY	11803
T-13-NY-1360	Westmore Fuel Co Inc	2 Purdy Ave	Port Chester	NY	10573
T-16-NY-1495	Kingston Oil Supply-Port Ewen	North Broadway	Port Ewen	NY	12166
T-11-NY-1317	Lewis Oil Port Washington	65 Shore Road	Port Washington	NY	11050
T-14-NY-1422	Effron Fuel Oil Co	154 Garden St	Poughkeepsie	NY	12601
T-14-NY-1404	Petroleum Fuel Albany	54 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1415	Amerada Hess Rensselaer	River Road E Greenbush	Rensselaer	NY	12144
T-14-NY-1416	Bray Terminals Rensselaer	50 Riverside Drive	Rensselaer	NY	12144
T-14-NY-1417	Sprague Energy Rensselaer	Riverside Avenue, PO Box 25	Rensselaer	NY	12144
T-14-NY-1418	Getty Terminal Rensselaer	49 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1420	Sun Rensselaer	58 Riverside Avenue	Rensselaer	NY	12144
T-11-NY-1318	Tosco Riverhead	212 Sound Shore Road	Riverhead	NY	11901
T-16-NY-1452	Amerada Hess Rochester Cairn	72 Cairn St.	Rochester	NY	14606
T-16-NY-1468	Agway Petroleum Rochester	754 Brooks Ave	Rochester	NY	14619
T-16-NY-1469	Amerada Hess Rochester Lyell	1975 Lyell Avenue	Rochester	NY	14606
T-16-NY-1470	Griffith Oil-Rochester	335 McKee Rd	Rochester	NY	14611
T-16-NY-1472	Mobil Oil Rochester	675 Brooks Avenue	Rochester	NY	14619
T-16-NY-1473	Sun Rochester	1840 Lyell Avenue	Rochester	NY	14606
T-16-NY-1474	United Refining Rochester	1075 Chili Avenue	Rochester	NY	14624
T-16-NY-1494	Alaskan Oil- Rochester	1935 Lyell Avenue	Rochester	NY	14606
T-13-NY-1355	Mobil Oil Port Mobil	4101 Arthur Kill Rd	Staten Island	NY	10309
T-13-NY-1362	GATX Staten Island	500 Western Ave	Staten Island	NY	10302
T-13-NY-1359	Panco Equipment Corp	Main St Box 659	Stoney Point	NY	10980
T-16-NY-1478	CITGO Syracuse	545 Solar Street	Syracuse	NY	13204
T-16-NY-1479	Coastal Oil Syracuse	475 Solar Street	Syracuse	NY	13204
T-16-NY-1480	Mobil Oil Syracuse	502 Solar Street	Syracuse	NY	13261
T-16-NY-1482	Sun Syracuse	540 Solar Street	Syracuse	NY	13204
T-16-NY-1457	United Refining Tonawanda	4545 River Road	Tonawanda	NY	14150
T-16-NY-1459	Noco Energy Corp	700 Grand Island Blvd	Tonawanda	NY	14151
T-16-NY-1484	Sun Tonawanda	3733 River Road	Tonawanda	NY	14150
T-16-NY-1486	Mobil Oil Utica	37 Wurz Avenue	Utica	NY	13502
T-16-NY-1451	Mobil Oil Binghamton	3301 Old Vestal Rd	Vestal	NY	13850
T-16-NY-1453	Coastal Oil Binghamton	3121 Shippers Road	Vestal	NY	13851
T-16-NY-1454	CITGO Vestal	3212 Old Vestal Road	Vestal	NY	13850
T-16-NY-1488	Agway Petroleum Vestal	Shippers Road	Vestal	NY	13851
T-16-NY-1489	Amerada Hess Vestal	440 Prentice Road	Vestal	NY	13850
T-16-NY-1476	Amerada Hess Warners	6700 Herman Rd.	Warners	NY	13164
T-13-NY-1363	A Tarricone Yonkers	91 Alexander St	Yonkers	NY	10701

TCN	Terminal Name	Address	City	State	Zip
T-34-OH-3159	Sun Akron	999 Home Avenue	Akron	OH	44310
T-34-OH-3142	Aurora Terminal & Trans	1519 S Chillicothe Rd	Aurora	OH	44202
T-34-OH-3168	Amoco Oil Aurora	1521 Chillicothe Rd	Aurora	OH	44202
T-34-OH-3166	Marathon Bellevue	Rural Route 4	Bellevue	OH	44811
T-34-OH-3151	Marathon Brecksville	10439 Brecksville Road	Brecksville	OH	44141
T-34-OH-3170	Clark Rfg-Brecksville	10346 Brecksville Rd	Brecksville	OH	44141
T-34-OH-3173	TransMontaigne Terminaling	15982 State Rd Rte 127 EW Rd	Bryan	OH	43506
T-34-OH-3140	Ashland Refinery Canton	2408 Gamfrinus Rd SW	Canton	OH	44706
T-34-OH-3143	B P Oil Canton	807 Hartford Southeast	Canton	OH	44707
T-31-OH-3100	Ashland Cincinnati	4015 River Road	Cincinnati	OH	45204
T-31-OH-3104	B P Oil Cincinnati	930 Tennessee Avenue	Cincinnati	OH	45229
T-31-OH-3122	Boswell Oil Company	5 W 4th St Floor 2500	Cincinnati	OH	45202
T-34-OH-3150	Fleet Supplies	250 Mahoning Ave	Cleveland	OH	44101
T-34-OH-3157	Shell Oil Cleveland	2201 West Third Street	Cleveland	OH	44113
T-34-OH-3160	Sun Cleveland	3200 Independence Road	Cleveland	OH	44105
T-34-OH-3163	CITGO - Cleveland	2985 Eggers Avenue	Cleveland	OH	44105
T-31-OH-3101	Ashland Columbus	3855 Fisher Road	Columbus	OH	43228
T-31-OH-3105	B P Oil Columbus	303 North Wilson Road	Columbus	OH	43204
T-31-OH-3107	Clark Rfg Columbus	4033 Fisher Road	Columbus	OH	43228
T-31-OH-3111	Midwest Terminal Columbus	3866 Fisher Rd	Columbus	OH	43228
T-31-OH-3112	Marathon Columbus	4125 Fisher Rd	Columbus	OH	43228
T-31-OH-3114	Shell Oil Columbus	3651 Fisher Rd	Columbus	OH	43228
T-31-OH-3116	Sun Columbus	3499 West Broad Street	Columbus	OH	43204
T-31-OH-3123	Eott Energy Columbus	580 Phillipi Road	Columbus	OH	43228
T-34-OH-3144	B P Oil Cleveland	4850 E 49th Street	Cuyahoga Hts	OH	44125
T-31-OH-3106	B P Oil Dayton	621 Brandt Pike	Dayton	OH	45404
T-31-OH-3115	Shell Oil Dayton	801 Brandt Pike	Dayton	OH	45404
T-31-OH-3117	Sun Dayton	1708 Farr Drive	Dayton	OH	45404
T-31-OH-3121	CITGO - Dayton	1800 Farr Drive	Dayton	OH	45404
T-31-OH-3120	CITGO - Dublin	6433 Cosgray Road	Dublin	OH	43016
T-34-OH-3174	ITAPCO Ohio Terminal Inc.	425 River Rd.	East Liverpool	OH	43920
T-34-OH-3145	B P Oil Lorain	12545 S Avon Belden Rd	Grafton	OH	44044
T-31-OH-3102	Ashland Heath	840 Heath Road	Heath	OH	43056
T-31-OH-3113	Marathon Lebanon	999 West State Rt 122	Lebanon	OH	45036
T-31-OH-3118	TEPPCO Lebanon	2700 Hart Road	Lebanon	OH	45036
T-34-OH-3146	B P Oil Lima	817 West Vine Street	Lima	OH	45804
T-34-OH-3152	Marathon Lima	2990 South Dixie Highway	Lima	OH	45804
T-34-OH-3158	Shell Oil Lima	1500 West Buckeye Road	Lima	OH	45804
T-34-OH-3172	EOTT Energy OLP-Lima	3111 South Dixie Hwy	Lima	OH	45804
T-31-OH-3103	Ashland Marietta	Old Rt 7 & Moores Junction	Marietta	OH	45750
T-31-OH-3110	ITAPCO Marietta Inc.	RT 7 & Milerun Road	Marietta	OH	45750
T-31-OH-3119	TEPPCO	3590 Yankee Rd.	Middletown	OH	45043
T-34-OH-3156	Shell Oil Akron	246 N Cleveland Ave.	Mogadore	OH	44260
T-34-OH-3167	B P Oil Niles	1001 Youngstown Warren Rd	Niles	OH	41446
T-34-OH-3153	Marathon Oregon	4131 Seaman Road	Oregon	OH	43616
T-34-OH-3165	CITGO - Oregon	1840 Otter Creek Road	Oregon	OH	43616
T-31-OH-3108	B P Oil Sciotoville	106 Harding Ave	Portsmouth	OH	45662
T-34-OH-3171	EOTT Energy OLP-Richfield	3245 Henry Rd	Richfield Twp	OH	44286
T-34-OH-3154	Marathon Stuebenville	2B371 Kingsdale Road	Stuebenville	OH	43952
T-34-OH-3164	CITGO - Tallmadge	1595 Southeast Avenue	Tallmadge	OH	44278
T-34-OH-3147	B P Oil Tiffin	197 Wall Street	Tiffin	OH	44883
T-34-OH-3148	B P Oil Toledo	2450 Hill Avenue	Toledo	OH	43607
T-34-OH-3149	Delta Fuels Toledo	1820 South Front	Toledo	OH	43605
T-34-OH-3161	Sun Toledo	1601 Woodvalle Road	Toledo	OH	43605
T-34-OH-3169	Clark Rfg Toledo	2844 Summit St	Toledo	OH	43611
T-34-OH-3155	Marathon Youngstown	1140 Bears Den Road	Youngstown	OH	44511
T-34-OH-3162	Sun Youngstown	6331 Southern Boulevard	Youngstown	OH	44512
T-73-OK-2600	Total Petroleum Ardmore	Hwy 142 Bypass	Ardmore	OK	73401
T-73-OK-2613	Williams Pipeline Co Okla City	251 N Sunny Lane	Del City	OK	73117
T-73-OK-2604	S T Services Drumright	Route One	Drumright	OK	74030
T-73-OK-2606	Williams Pipeline Enid	1401 North 30th Street	Enid	OK	73701
T-73-OK-2608	Conoco Jenks	Route Two	Jenks	OK	74037
T-73-OK-2609	Phillips 66 Laverne	U S 283	Laverne	OK	73848
T-73-OK-2610	Koch Fuels Medford	US 81	Medford	OK	73759
T-73-OK-2612	Conoco Oklahoma City	NE Tenth St Rt 4	Oklahoma City	OK	73111
T-73-OK-2614	Texaco Oklahoma City	951 N Vickie	Oklahoma City	OK	73117
T-73-OK-2616	Williams Pipeline Oklahoma Cty	1250 South High Street	Oklahoma City	OK	73129
T-73-OK-2617	Conoco Ponca City	South Highway 60	Ponca City	OK	74601
T-73-OK-2618	Sinclair Pipeline Shawnee	39101 MacArthur Road	Shawnee	OK	74802
T-73-OK-2619	Barrett Refining Thomas Plant	Rt 1 Box 101	Thomas	OK	73669
T-73-OK-2620	Sinclair Pipeline Tulsa	1307 West 35th Street	Tulsa	OK	74107
T-73-OK-2621	Sun Tulsa	1700 South Union	Tulsa	OK	74102

TCN	Terminal Name	Address	City	State	Zip
T-73-OK-2622	Williams Pipeline Tulsa	2120 S 33rd Ave	Tulsa	OK	74107
T-73-OK-2623	Diamond Shamrock Turpin	Hwy 64 & Junction Rt 2	Turpin	OK	73950
T-73-OK-2624	Gary Williams Energy Corp	906 South Powell	Wynnewood	OK	73098
T-93-OR-4453	Toscos Coos Bay	2640 North Bayshore	Coos Bay	OR	97420
T-93-OR-4454	SFPP LP Eugene	1765 Prairie Road	Eugene	OR	97402
T-93-OR-4455	ARCO Portland Terminal	9930 NW St Helens Rd	Portland	OR	97231
T-93-OR-4456	Chevron USA Portland	5531 Northwest Doane Street	Portland	OR	97210
T-93-OR-4457	GATX Terminals Portland	11400 NW St Helens Road	Portland	OR	97283
T-93-OR-4458	McCall Oil Portland	5480 NW Front Ave	Portland	OR	97210
T-93-OR-4459	Mobil Portland	9420 Northwest St Helens Rd	Portland	OR	97231
T-93-OR-4460	GATX Portland	5880 NW St Helens Road	Portland	OR	97210
T-93-OR-4461	Texaco Portland	3800 Northwest St Helens Road	Portland	OR	97210
T-93-OR-4462	Time Oil Portland St Helens	9100 NW St Helens Road	Portland	OR	97231
T-93-OR-4463	Time Oil Portland Burgard	12005 North Burgard Street	Portland	OR	97203
T-93-OR-4464	Toscos Portland	5528 Northwest Doane	Portland	OR	97210
T-93-OR-4452	Tidewater Terminal Umatilla	535 Port Avenue	Umatilla	OR	97882
T-23-PA-1700	Agway Petroleum Corp Macungie	Buckeye Road	Allentown	PA	18062
T-23-PA-1701	Mobil Oil Allentown	1134 North Quebec Street	Allentown	PA	18103
T-25-PA-1767	Petroleum Products Eldorado	Burns Avenue	Altoona	PA	16602
T-25-PA-1785	Gulf Oil Altoona	6033 Sixth Avenue	ALtoona	PA	16602
T-25-PA-1788	Sun Altoona	Route 764 Sugar Run Road	Altoona	PA	16601
T-23-PA-1746	Sun Twin Oaks	4041 Market Street	Aston	PA	19014
T-23-PA-1703	Gulf Oil Avoca	Box 403-A Suscon Rd	Avoca	PA	18641
T-23-PA-1706	Petroleum Products - Avoca	801 Suscon Rd.	Avoca	PA	18641
T-23-PA-1707	Petroleum Products Du Pont	Suscon Road	Avoca	PA	18641
T-25-PA-1790	Guttman Oil Belle Vernon	200 Speers Road	Belle Vernon	PA	15012
T-23-PA-1764	American Refining Bradford	77 North Kendall Ave.	Bradford	PA	16701
T-23-PA-1705	Petron Oil Corporation	One Ward Street	Chester	PA	19013
T-25-PA-1760	Buckeye Tank Term Coraopolis	520 Narrows Run Road	Coraopolis	PA	15108
T-25-PA-1780	Star Enterprise Pittsburgh	Nine Thorn Street	Coraopolis	PA	15108
T-25-PA-1792	B P Oil Coraopolis	Access State Route 51	Coraopolis	PA	15108
T-25-PA-1761	Sun Delmont	Route 66 North	Delmont	PA	15626
T-25-PA-1778	Gulf Oil Pittsburgh/Delmont	Route 22	Delmont	PA	15626
T-25-PA-1762	Boswell Oil Co Dravosburg	702 Washington Avenue	Dravosburg	PA	15034
T-23-PA-1763	Two River Terminal-Duncannon	27 Chevron Drive	Duncannon	PA	17020
T-25-PA-1765	Petroleum Products-E. Freedom	Old Rte US 220	East Freedom	PA	16637
T-23-PA-1720	Sun Kingston	60 S Wyoming Avenue	Edwardsville	PA	18704
T-23-PA-1710	Sun Exton	601 East Lincoln Hwy	Exton	PA	19341
T-25-PA-1768	Ashland Floreffe	204 Glass House Road	Floreffe	PA	15025
T-23-PA-1718	Mobil Oil Malvern	8 South Malin Rd	Frazer	PA	19406
T-25-PA-1769	B P Oil Greensburg	Rural Delivery 6	Greensburg	PA	15601
T-23-PA-1713	Mobil Oil Harrisburg	5140 Paxton Street	Harrisburg	PA	17111
T-23-PA-1714	Petroleum Products Harrisburg	3300 Industrial Road	Harrisburg	PA	17110
T-23-PA-1740	Montour Oil Service-Harrisburg	80 South 40th St.	Harrisburg	PA	17111
T-23-PA-1751	Sun Willow Grove	3290 Sunset Lane	Hatboro	PA	19040
T-23-PA-1758	Getty Oil - Highspire	911 Eisenhower Blvd.	Highspire	PA	17034
T-25-PA-1771	American Refining Indianola	State Route 910	Indianola	PA	15051
T-23-PA-1721	Mobil Oil Lancaster	1360 Manheim Pike	Lancaster	PA	17604
T-23-PA-1702	Farm & Home Oil Co. - Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1704	Carlos R Leffler Inc Macungie	5088 Shippers Lane	Macungie	PA	18062
T-23-PA-1733	Pipeline Petroleum-MaCungie	Shippers Lane	Macungie	PA	18062
T-23-PA-1722	Sun Malvern	Lincoln Hwy & Malin Road	Malvern	PA	19355
T-23-PA-1723	Bayway Refining Co-Marcus Hook	428 Post Rd	Marcus Hook	PA	19061
T-23-PA-1715	Star Enterprise Harrisburg	RD 5 Texaco Drive	Mechanicsburg	PA	17055
T-23-PA-1724	Petroleum Products-Mechanicsbu	Sinclair Rd	Mechanicsburg	PA	17055
T-23-PA-1725	Gulf Oil Mechanicsburg	5125 Simpson Ferry Rd	Mechanicsburg	PA	17055
T-23-PA-1726	Sun Mechanicsburg	5145 Simpson Ferry Road	Mechanicsburg	PA	17055
T-23-PA-1716	Petroleum Products Highspire	900 Eisenhower Blvd	Middletown	PA	17057
T-25-PA-1773	Ashland Petroleum-Midland	Rt 68	Midland	PA	15059
T-23-PA-1709	Montour Oil Service	112 Broad St	Montoursville	PA	17754
T-23-PA-1741	Montour Oil Service-Montoursvi	Rt I-180/Warrensville	Montoursville	PA	17754
T-23-PA-1754	C R Leffler New Kingston	236 Locust Pt Road	New Kingston	PA	17702
T-23-PA-1728	Petroleum Prod Northumberland	Rt 11 North RD 1	Northumberland	PA	17857
T-23-PA-1729	Sun Northumberland	Rt 11 North Rd 1	Northumberland	PA	17857
T-23-PA-1737	Maritank Phila Inc	67th & Schuylkill River	Philadalphia	PA	19153
T-23-PA-1730	Amerada Hess Philadelphia	1630 South 51st Street	Philadelphia	PA	19143
T-23-PA-1731	Amoco Oil Philadelphia	63rd & Passyunk Avenue	Philadelphia	PA	19153
T-23-PA-1732	Bayway Refining Co. - Phila	G Street & Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1734	Exxon USA Philadelphia	6850 Essington Avenue	Philadelphia	PA	19153
T-23-PA-1736	Sun Philadelphia	2700 W Passyunk Avenue	Philadelphia	PA	19145
T-23-PA-1755	Major Oil-Philadelphia	501 E. Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1759	Louis Dreyfus Energy-Phila	58th St. & Schuylkill River	Philadelphia	PA	19142

TCN	Terminal Name	Address	City	State	Zip
T-25-PA-1776	Exxon USA Pittsburgh	2760 Neville Road	Pittsburgh	PA	15225
T-25-PA-1777	Gulf Oil Pittsburgh	400 Grand Ave	Pittsburgh	PA	15225
T-25-PA-1779	Pennzoil Products Pittsburgh	54th Street and AVRR	Pittsburgh	PA	15201
T-25-PA-1781	Sun Pittsburgh	5733 Butler Street	Pittsburgh	PA	15201
T-25-PA-1791	Sun Blawnox	Freeport Road & Boyd Avenue	Pittsburgh	PA	15238
T-23-PA-1745	C R Leffler Tuckerton	4030 Pottsville Pike	Reading	PA	19605
T-25-PA-1782	Pennzoil Products Rouseville	Two Main Street	Rouseville	PA	16344
T-23-PA-1708	Carlos R Leffler Inc S Spring	Mountain Home Road	Sinking Spring	PA	19608
T-23-PA-1727	Sun Montello	Fritztown Road	Sinking Spring	PA	19608
T-23-PA-1742	Petroleum Products-Sinking Spr	Mountain Home Rd	Sinking Spring	PA	19608
T-23-PA-1717	Coastal Oil New York Inc	Sylvan Dell Rd	South Williamsport	PA	17701
T-23-PA-1743	Carlos R Leffler Inc	Sylvan Dell Road	South Williamsport	PA	17701
T-23-PA-1744	Sun Tamaqua	Tuscarora State Park Rd	Tamaqua	PA	18252
T-23-PA-1753	Meenan Oil Co Tullytown	113 Main Street	Tullytown	PA	19007
T-25-PA-1789	Sun Vanport	Route 68 & Division Lane	Vanport	PA	15009
T-25-PA-1783	United Refining Warren	15 Bradley Street	Warren	PA	16365
T-23-PA-1711	Sun Whitehall	2480 Main St	Whitehall	PA	18052
T-23-PA-1748	Gulf Oil Whitehall	2451 Main Street	Whitehall	PA	18052
T-23-PA-1749	Gulf Oil Williamsport	Sylvan Dell Rd	Williamsport	PA	17703
T-05-RI-1200	Getty Terminal Providence	Dexter Rd & Massasoit Ave	East Providence	RI	02914
T-05-RI-1207	Mobil Oil East Providence	1001 Wampanoag Trail	East Providence	RI	02915
T-05-RI-1201	Sprague Energy Providence	144 Allens Avenue	Providence	RI	02903
T-05-RI-1202	CITGO Petroleum Providence	130 Terminal Road	Providence	RI	02905
T-05-RI-1204	Northeast Petroleum	170 Allens Avenue	Providence	RI	02903
T-05-RI-1205	Star Enterprise Providence	520 Allens Avenue	Providence	RI	02905
T-57-SC-2050	Amerada Hess Belton	Highway 20 North	Belton	SC	29627
T-57-SC-2051	Louis Dreyfus Belton	Hwy 20 North	Belton	SC	29627
T-57-SC-2053	Marathon Petroleum Belton	State Route 20	Belton	SC	29627
T-57-SC-2066	Marathon North Charleston	5165 Virginia Ave	Charleston	SC	29406
T-57-SC-2054	Allied Terminals -Charleston	1500 Greenleaf St.	Chrleston	SC	29405
T-57-SC-2059	Amoco Oil Inc North Augusta	Sweet Water Road	North Augusta	SC	29841
T-57-SC-2060	Charter Term Co North Augusta	221 Laurel Lake Drive	North Augusta	SC	29841
T-57-SC-2061	B P Oil North Augusta	Access Highway 36	North Augusta	SC	29841
T-57-SC-2062	Phillips Pipeline N Augusta	Highway 36 & Sweetwater	North Augusta	SC	29841
T-57-SC-2063	Williams Energy Ventures-Augus	222 Sweetwater Road	North Augusta	SC	29841
T-57-SC-2064	Amerada Hess N Charleston	5150 Virginia Ave	North Charleston	SC	29406
T-57-SC-2065	Koch Refining N Charleston	1003 East Montague	North Charleston	SC	29406
T-57-SC-2067	Amerada Hess Spartanburg	Old Union Road	Spartanburg	SC	29304
T-57-SC-2068	Amoco Oil Spartanburg	Old Union Rd Route 4	Spartanburg	SC	29304
T-57-SC-2074	Phillips Pipeline Spartanburg	200 Nebo Street	Spartanburg	SC	29302
T-57-SC-2076	Southern Facility Spartanburg	2430 Pine Street Ext	Spartanburg	SC	29302
T-57-SC-2077	CITGO Petroleum - Spartanburg	2590 Southport Road	Spartanburg	SC	29302
T-57-SC-2071	Crown Central Spartansburg	PO Box 2442	Spartansburg	SC	29304
T-57-SC-2075	Shell Oil Spartanburg	300 Delmar Road	Spartansburg	SC	29302
T-57-SC-2052	Louis Dreyfus Spartenburg	680 Dilmer Road	Spartenburg	SC	29302
T-46-SD-3550	Kaneb Pipe Line Aberdeen	Hwy 281	Aberdeen	SD	57401
T-46-SD-3558	Williams Pipe Line Canton	RR 1 Box 12 A	Canton	SD	57013
T-46-SD-3551	Kaneb Pipe Line Mitchell	Hwy 38	Mitchell	SD	57301
T-46-SD-3552	Kaneb PipeLine Rapid City	3225 Eglin Street	Rapid City	SD	57701
T-46-SD-3553	Amoco Oil Sioux Falls	3751 S Grange	Sioux Falls	SD	57105
T-46-SD-3554	Williams Pipeline Sioux Falls	5300 west 12th Street	Sioux Falls	SD	57107
T-46-SD-3555	Williams Pipeline Watertown	1000 17th Street S E	Watertown	SD	57201
T-46-SD-3556	Kaneb Pipe Line Wolsey	US Hwy 14 & 281	Wolsey	SD	57384
T-46-SD-3557	Kaneb Pipe Line Yankton	Star Rte 50	Yanton	SD	57078
T-62-TN-2200	Amoco Oil Chattanooga	4235 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2201	Chevron USA Chattanooga	4716 Bonny Oaks Drive	Chattanooga	TN	37416
T-62-TN-2202	CITGO Chattanooga	4233 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2205	General Oils Chattanooga	817 Pineville Road	Chattanooga	TN	37405
T-62-TN-2206	Louis Dreyfus Chattanooga	5800 St Elmo Avenue	Chattanooga	TN	37409
T-62-TN-2207	Benton Oil Service, Inc.	4211 Cromwell Rd.	Chattanooga	TN	37421
T-62-TN-2208	Southern Facility Chattanooga	4326 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2209	Amoco - Chattanooga	710 Manufacturers Road	Chattanooga	TN	37405
T-62-TN-2211	Amoco Oil Knoxville	5101 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2213	CITGO Knoxville	2409 Knott Road	Knoxville	TN	37921
T-62-TN-2214	Cummins Terminals Knoxville	4715 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2215	Exxon USA Knoxville	5009 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2216	B P Oil Knoxville	1908 Third Creek Road	Knoxville	TN	37921
T-62-TN-2217	Marathon Oil Knoxville	2601 Knott Road	Knoxville	TN	37950
T-62-TN-2218	Shell Oil Knoxville	5001 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2219	Southern Facility Knoxville	4801 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2221	Louis Dreyfus Knoxville	1720 Island Home Avenue	Knoxville	TN	37920
T-62-TN-2243	Cummins Terminal-Knoxville	5100 Middlebrook Pike	Knoxville	TN	37921

TCN	Terminal Name	Address	City	State	Zip
T-62-TN-2203	Truman Arnold Memphis	1237 Riverside	Memphis	TN	38106
T-62-TN-2225	Exxon USA Memphis	454 Wisconsin Avenue	Memphis	TN	38106
T-62-TN-2226	Lion Oil Memphis	1023 Riverside	Memphis	TN	38106
T-62-TN-2227	MAPCO Petroleum Memphis	321 West Mallory	Memphis	TN	38109
T-62-TN-2228	Petroleum Fuel Memphis	1232 Riverside	Memphis	TN	38106
T-62-TN-2204	Lion Oil Nashville	90 Van Buren St	Nashville	TN	37208
T-62-TN-2231	Amoco Oil Nashville	1441 51st Avenue North	Nashville	TN	37209
T-62-TN-2232	Ashland Nashville	Five Main Street	Nashville	TN	37213
T-62-TN-2233	CITGO Nashville	720 South Second Street	Nashville	TN	37213
T-62-TN-2234	Cumberland Terminals Nashville	7260 Centennial Boulevard	Nashville	TN	37209
T-62-TN-2236	Exxon USA Nashville	1741 Ed Temple Blvd	Nashville	TN	37208
T-62-TN-2237	B P Oil Nashville	1409 51st Ave	Nashville	TN	37209
T-62-TN-2238	Marathon Oil Nashville	2920 Old Hydes Ferry Road	Nashville	TN	37218
T-62-TN-2241	Star Enterprise Nashville	1717 61st & Centennial Bvld	Nashville	TN	37209
T-62-TN-2242	Kerr-McGee Nashville	180 Anthes Avenue	Nashville	TN	37210
T-62-TN-2240	Williams Energy Ventures-Nashv	1609 63rd Avenue North	Nashvilleue North	TN	37209
T-75-TX-2650	Diamond Abernathy	Highway 54	Abernathy	TX	79311
T-75-TX-2651	Fina Oil Abilene	Highway 277 North	Abilene	TX	79604
T-75-TX-2652	Pride Abilene	Hwy 277 N Industrial District	Abilene	TX	79604
T-75-TX-2665	Pride Aledo	I 20 in Willow Park	Aledo	TX	76008
T-75-TX-2653	Diamond Amarillo	4200 West Cliffside	Amarillo	TX	79124
T-75-TX-2654	Phillips 66 Amarillo	4300 Cliffside Dr	Amarillo	TX	79142
T-74-TX-2706	Koch Refining Austin	9011 Johnny Morris Rd	Austin	TX	78724
T-76-TX-2783	Clark Beaumont Terminal	9406 West Port Arthur Rd	Beaumont	TX	77705
T-76-TX-2798	Mobil Oil Beaumont	Route 4	Beaumont	TX	77705
T-76-TX-2784	Chevron USA Big Sandy	Highway 155 and Sabine River	Big Sandy	TX	75755
T-75-TX-2656	Fina Oil Big Spring	East IS-20 & Refinery Rd	Big Spring	TX	79721
T-75-TX-2657	Phillips 66 Borger	Spur 119 North	Borger	TX	79007
T-74-TX-2709	CITGO Brownsville	11001 South Port Road	Brownsville	TX	78520
T-74-TX-2713	CITGO Bryan	1714 Finfeather Road	Bryan	TX	77801
T-75-TX-2659	Truman Arnold Caddo Mills	2738 County Road	Caddo Mills	TX	75135
T-74-TX-2701	Mobil Oil Center	US 87 South	Center	TX	75692
T-75-TX-2678	Mobil - Center	Hwy 87 South	Center	TX	75935
T-76-TX-2786	Koch Refining Channelview	16514 Dezavala Road	Channelview	TX	77530
T-76-TX-2791	Howell Hydrocarbons & Chem	1201 S Sheldon Road	Channelview	TX	77530
T-74-TX-2711	CITGO Oil Corpus Christi	2505 N Port Ave	Corpus Christi	TX	78401
T-74-TX-2716	CITGO Corpus Christi	1308 Oak Park Street	Corpus Christi	TX	78407
T-74-TX-2718	Coastal Oil Corpus Christi	1300 Cantwell	Corpus Christi	TX	78407
T-74-TX-2719	Diamond Corpus Christi	2700 Texaco Road	Corpus Christi	TX	78403
T-74-TX-2720	SW Refining Corpus Christi	1700 Nueces Bay Boulevard	Corpus Christi	TX	78469
T-74-TX-2721	Koch Refining Corpus Christi	Suntide Road	Corpus Christi	TX	78403
T-75-TX-2661	Mobil Oil Dallas	4200 Singleton Boulevard	Dallas	TX	75212
T-75-TX-2662	Star Enterprise Dallas	3900 Singleton	Dallas	TX	75212
T-74-TX-2710	Shell Odessa Refining-El Paso	6767 Gateway West	El Paso	TX	79926
T-74-TX-2724	Chevron USA El Paso	6501 Trowbridge	El Paso	TX	79905
T-74-TX-2726	Navajo Refining El Paso	1000 Eastside Road	El Paso	TX	79915
T-74-TX-2744	S T Services Elmendorf	20830 Lamm Rd	Elmendorf	TX	75112
T-75-TX-2655	Phillips 66 Arlington	12401 Calloway Cemetery Road	Euless	TX	76040
T-75-TX-2664	Koch Refining Euless	Highway 157 and Trinity Blvd	Euless	TX	76040
T-75-TX-2670	Total Petroleum Ft Worth	3520 Euless South Main	Euless	TX	76040
T-75-TX-2690	DFLP Terminal	12625 Calloway Cemetary Rd.	Euless	TX	76040
T-74-TX-2728	Coastal Oil Falfurrias	Three Mi North on US Hwy 281	Falfurrias	TX	78355
T-75-TX-2666	Chevron USA Fort Worth	2525 Brennan Street	Fort Worth	TX	76106
T-75-TX-2667	CITGO Fort Worth	301 Terminal Road	Fort Worth	TX	76106
T-75-TX-2668	Mobil Oil Fort Worth	3600 North Sylvania	Fort Worth	TX	76111
T-75-TX-2669	Star Enterprise Ft Worth	3200 Sylvania	Fort Worth	TX	76111
T-76-TX-2788	GATX Galena Park	906 Clinton Drive	Galena Park	TX	77547
T-76-TX-2789	Chevron USA Galena Park	12523 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2792	Amerada Hess Galena Park	12901 American Petroleum Rd	Galena Park	TX	77547
T-75-TX-2671	Conoco Southlake	3100 Highway 26 West	Grapevine	TX	76051
T-75-TX-2672	Fina Oil Southlake	3000 Highway 26 West	Grapevine	TX	76051
T-75-TX-2680	Diamond Southlake	1700 Hwy 26	Grapevine	TX	76051
T-74-TX-2729	Diamond Harlingen	4.5 miles east on highway 106	Harlingen	TX	78550
T-74-TX-2702	Star Enterprise Hearne	Highway 6 South	Hearne	TX	77859
T-74-TX-2704	Exxon USA Hearne	Highway Six	Hearne	TX	77859
T-75-TX-2658	Mobil Oil Hearne	Hwy 6 South	Hearne	TX	77859
T-76-TX-2794	CITGO Houston	12325 North Fwy at Greens Rd	Houston	TX	77060
T-76-TX-2795	Coastal Oil Houston	11650 Almeda Road Loop 610	Houston	TX	77045
T-76-TX-2799	Jetera Fuels Houston	17617 Aldine-Westfield Road	Houston	TX	77073
T-76-TX-2800	Lyondell-CITGO Refining	12000 Lawndale	Houston	TX	77002
T-76-TX-2803	Star Enterprise Houston	2661 Stevens Street	Houston	TX	77226
T-76-TX-2804	Stolt Perth Amboy - Houston	15602 Jacinto Port Blvd	Houston	TX	77213

TCN	Terminal Name	Address	City	State	Zip
T-76-TX-2806	Phibro Energy USA Houston	9701 Manchester	Houston	TX	77536
T-76-TX-2808	Exxon USA North Houston	8700 North Freeway	Houston	TX	77037
T-76-TX-2812	Exxon USA South Houston	10501 East Almeda	Houston	TX	77051
T-75-TX-2660	Exxon USA Dallas	1201 East Airport Freeway	Irving	TX	75062
T-74-TX-2715	Diamond Laredo	13380 South Unitec	Laredo	TX	78044
T-75-TX-2674	Phillips 66 Lubbock	Clovis Road and Flint Avenue	Lubbock	TX	79408
T-75-TX-2675	Texaco Lubbock	Clovis Rd & Flint Ave Hwy 84	Lubbock	TX	79417
T-74-TX-2730	Coastal Oil Hidalgo	7 Miles S at Hidalgo Box 3095	McAllen	TX	78501
T-75-TX-2679	Chevron USA Midland	1100 North County Rd 1160	Midland	TX	
T-75-TX-2676	Conoco Mount Pleasant	1503 West Ferguson	Mount Pleasant	TX	75455
T-76-TX-2787	UNOCAL Beaumont	Hwy 366	Nederland	TX	77627
T-75-TX-2685	Shell Odessa Refining-Odessa	2700 S Grandview	Odessa	TX	79760
T-76-TX-2782	Shell Oil Pasadena	1320 West Shaw St	Pasadena	TX	77501
T-76-TX-2809	GATX Pasadena	530 North Witter	Pasadena	TX	77506
T-76-TX-2811	Phillips Pipeline Pasadena	100 Jefferson Street	Pasadena	TX	77501
T-74-TX-2731	Coastal Oil Placedo	2 Mi S of Placedo Hwy 87	Placedo	TX	77977
T-74-TX-2733	Fina Oil Port Arthur Hwy 366	Highway 366 and 32nd Street	Port Arthur	TX	77640
T-76-TX-2785	Star Enterprise Port Arthur	401 West 19th Street	Port Arthur	TX	77640
T-76-TX-2801	Fina Oil Port Arthur 32nd	Hwy 366 & 32nd St	Port Arthur	TX	77642
T-75-TX-2686	Pride San Angelo	4008 U S Hwy 67N	San Angelo	TX	76905
T-74-TX-2737	CITGO - San Antonio	4851 Emil Road	San Antonio	TX	78219
T-74-TX-2738	Coastal Oil San Antonio	4719 Corner Parkway 2	San Antonio	TX	78219
T-74-TX-2739	Diamond San Antonio	10619 Highway 281 South	San Antonio	TX	78221
T-74-TX-2740	Exxon USA San Antonio	3214 North Pan Am Expressway	San Antonio	TX	78219
T-74-TX-2742	Koch Refining San Antonio	498 and Pop Gun	San Antonio	TX	78219
T-74-TX-2745	Star Enterprise San Antonio	510 Petroleum Drive	San Antonio	TX	78219
T-76-TX-2780	Petro-United Terminals Bayport	11666 Port Road	Seabrook	TX	77586
T-75-TX-2682	Diamond Sunray	9 Mi NE of Dumas TX on FM 119	Sunray	TX	79086
T-76-TX-2813	Phillips 66 Sweeny	Hwys 35 & 36 at West Columbia	Sweeny	TX	77480
T-76-TX-2814	S T Services Texas City	201 Main Dock Road	Texas City	TX	77590
T-74-TX-2747	Diamond Three Rivers	301 Leroy Street	Three Rivers	TX	78071
T-74-TX-2748	Conoco Tye	I-20 West Exit 278	Tye	TX	79563
T-75-TX-2681	La Gloria Oil Tyler	425 McMurry Drive	Tyler	TX	75702
T-74-TX-2703	CITGO Victoria	1708 North Ben Jordan Blvd	Victoria	TX	77901
T-74-TX-2705	Star Enterprise Waco	420 South Lacy drive	Waco	TX	76705
T-74-TX-2707	Koch Refining Waco	2017 Kendall Lane	Waco	TX	76705
T-74-TX-2708	Mobil Oil Waco	502 South Lacy Dr	Waco	TX	76705
T-74-TX-2749	CITGO Waco	1600 South Loop Dr	Waco	TX	76705
T-75-TX-2687	Star Enterprise Waskom	9 South	Waskom	TX	75692
T-75-TX-2688	Mobil Oil Waskom	9 South	Waskom	TX	75692
T-75-TX-2683	Fina Oil Wichita Falls	Old Charlie & Sinclair Blvd	Wichita Falls	TX	76307
T-75-TX-2684	Conoco Wichita Falls	1214 North Eastside Ave	Wichita Falls	TX	76304
T-87-UT-4200	Flying J North Salt Lake	333 West Center St	North Salt Lake	UT	84054
T-87-UT-4204	Salt Lake Terminal Company	245 East 1100 North	North Salt Lake City	UT	84054
T-87-UT-4202	Amoco Oil Salt Lake City	474 West 900 N	Salt Lake City	UT	84103
T-87-UT-4203	Chevron USA Salt Lake City	2351 North Tenth West	Salt Lake City	UT	84110
T-87-UT-4205	Crysen Refining Woods Cross	2355 South 1100 West	Woods Cross	UT	84087
T-87-UT-4206	Phillips 66 Woods Cross	393 South 800 West	Woods Cross	UT	84087
T-54-VA-1652	CITGO Cheasapeake	201 Freeman Street	Cheasapeake	VA	23324
T-54-VA-1650	Amerada Hess Chesapeake	4030 Buell Street	Chesapeake	VA	23324
T-54-VA-1651	Amoco Oil Chesapeake	428 Barnes Road	Chesapeake	VA	23324
T-54-VA-1653	Allied Terminals, Inc.	502 Hill Street	Chesapeake	VA	23324
T-54-VA-1654	Exxon USA Chesapeake	4115 Buell Street	Chesapeake	VA	23324
T-54-VA-1656	Louis Dreyfus Chesapeake	7600 Halifax Lane	Chesapeake	VA	23324
T-54-VA-1673	Crown Central Norfolk	801 Butt Street	Chesapeake	VA	23324
T-54-VA-1674	Mobil Oil Norfolk	Halifax Lane	Chesapeake	VA	23324
T-54-VA-1658	S T Services Dumfries	1800 Cockpit Point Road	Dumfries	VA	22026
T-54-VA-1659	Amoco Oil Fairfax	9601 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1660	Old Dominion Terminal-Fairfax	3790 Pickett Road	Fairfax	VA	22031
T-54-VA-1661	CITGO Fairfax	9600 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1662	Star Enterprise Fairfax	3800 Pickett Road	Fairfax	VA	22030
T-54-VA-1692	Shell Oil Springfield	8206 Terminal Road	Lorton	VA	22079
T-54-VA-1663	Mobil Oil Manassas	10315 Ballsford Road	Manassas	VA	22110
T-54-VA-1665	Amoco Oil Montvale	US Route 460 & St Rt 892	Montvale	VA	24122
T-54-VA-1666	Chevron USA Montvale	U S 460 East	Montvale	VA	24122
T-54-VA-1668	Williams Energy Ventures-Montv	U S Highway 460	Montvale	VA	24122
T-54-VA-1691	Star Enterprise Roanoke	Route 460	Montvale	VA	24122
T-54-VA-1664	Amerada Hess Montvale	Route 460	Monvale	VA	24122
T-54-VA-1670	Crown Central Newington	8211 Terminal Road	Newington	VA	22122
T-54-VA-1671	Exxon USA Newington	8200 Terminal Road	Newington	VA	22079
T-54-VA-1669	Koch Fuels Newport News	801 Terminal Ave	Newport News	VA	23607
T-54-VA-1655	Bagwell Oil Onancock	33 Market	Onancock	VA	23417

TCN	Terminal Name	Address	City	State	Zip
T-54-VA-1657	Primary Corp Deepwater	3302 Deepwater Terminal Rd	Richmond	VA	23234
T-54-VA-1672	Primary Corp Bickerstaff	413 Bickerstaff Rd	Richmond	VA	23231
T-54-VA-1677	Amoco Oil Richmond	1636 Commerce Road	Richmond	VA	23224
T-54-VA-1678	Chevron USA Richmond	700 Goodes Street	Richmond	VA	23224
T-54-VA-1679	CITGO Richmond	Third & Maury Street	Richmond	VA	23224
T-54-VA-1680	Crown Central Richmond	4405 E Main	Richmond	VA	23231
T-54-VA-1681	Exxon USA Richmond	2000 Trenton Avenue	Richmond	VA	23234
T-54-VA-1682	First Energy Corporation	Second & Maury Streets	Richmond	VA	23218
T-54-VA-1683	Koch Fuels Richmond	4110 Deepwater Terminal Road	Richmond	VA	23234
T-54-VA-1684	Williams Energy Ventures-Richm	204 East First Avenue	Richmond	VA	23224
T-54-VA-1685	Star Enterprise Richmond	5801 Jefferson Davis Highway	Richmond	VA	23234
T-54-VA-1687	Louis Dreyfus Richmond	1314 Commerce Road	Richmond	VA	23224
T-54-VA-1688	Exxon USA Roanoke	835 Hollins Road Northeast	Roanoke	VA	24012
T-54-VA-1689	Marathon Oil Roanoke	5287 Terminal Road	Roanoke	VA	24014
T-54-VA-1690	Shell Oil Roanoke	5280 Terminal Road SW	Roanoke	VA	24014
T-54-VA-1693	S T Services Virginia Beach	3925 North Landing Road	Virginia Beach	VA	23456
T-54-VA-1694	Amoco Oil Yorktown	Route 73 East Entrance	Yorktown	VA	23690
T-03-VT-1100	Mobil Oil Burlington	2 Flynn Avenue	Burlington	VT	05401
T-91-WA-4400	Texaco Anacortes	Marches Point	Anacortes	WA	98221
T-91-WA-4418	ARCO Cherry Point Terminal	4519 Grandview	Blaine	WA	98231
T-91-WA-4427	Tosco Northwest Co. - Ferndale	3901 Unic Rd.	Ferndale	WA	98248
T-91-WA-4401	Conoco Moses Lake	3 miles north of Moses Lake	Moses Lake	WA	98837
T-91-WA-4423	Tidewater Terminal Wilma	2950 Wilma Drive	North Clarkston	WA	99403
T-91-WA-4402	Northwest Terminaling Pasco	3000 Sacajawea Park Road	Pasco	WA	99301
T-91-WA-4420	Tidewater Snake River	Tank Farm Road	Pasco	WA	99301
T-91-WA-4404	Tosco Northwest Renton	2423 Lind Avenue Southwest	Renton	WA	98055
T-91-WA-4406	GATX Seattle	1733 Alaskan Way South	Seattle	WA	98134
T-91-WA-4408	Texaco Seattle	2555 13th Ave S W	Seattle	WA	98134
T-91-WA-4409	Time Oil Seattle	2737 West Commodore Way	Seattle	WA	98199
T-91-WA-4424	Pacific Northern Oil Corp	Pier 91 Bldg 19	Seattle	WA	98119
T-91-WA-4425	ARCO Seattle Terminal	1652 SW Lander St	Seattle	WA	95124
T-91-WA-4410	Conoco Spokane	6317 East Sharp Avenue	Spokane	WA	99206
T-91-WA-4411	Exxon USA Spokane	6311 East Sharp Avenue	Spokane	WA	99211
T-91-WA-4412	Tosco Northwest Spokane	3225 East Lincoln Road	Spokane	WA	99207
T-91-WA-4413	Tosco Northwest Tacoma	520 E D Street	Tacoma	WA	98421
T-91-WA-4414	Sound Refining Tacoma	2628 Marine View Drive	Tacoma	WA	98421
T-91-WA-4415	Superior Oil Tacoma	250 East D Street	Tacoma	WA	98401
T-91-WA-4421	US Oil & Refining Co.	3001 Marshall Ave	Tacoma	WA	98421
T-91-WA-4422	Toscos Tacoma	516 East D Street	Tacoma	WA	98421
T-91-WA-4416	Texaco Tumwate	7370 Linderson Way S W	Tumwater	WA	98501
T-91-WA-4417	CENEX Vancouver	5420 Fruit Valley Road	Vancouver	WA	98660
T-91-WA-4419	Tesoro Alaska Petro Vancouver	2211 West 26th Street Ext	Vancouver	WA	98660
T-39-WI-3064	CENEX Chippewa Falls	2331 N Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3082	ITAPCO-Wisconsin Terminal Inc.	2553 North Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3061	Amoco Oil Green Bay	1124 North Broadway	Green Bay	WI	54303
T-39-WI-3066	CITGO Green Bay	1391 Bylsby Avenue	Green Bay	WI	54303
T-39-WI-3070	Halron Oil Company Inc	2020 N Quincy St	Green Bay	WI	54306
T-39-WI-3075	Green Bay Terminal	1031 Hurlbut Street	Green Bay	WI	54303
T-39-WI-3077	Mobil Oil Green Bay	410 Prairie Ave	Green Bay	WI	54303
T-39-WI-3078	Clark Rfg Green Bay	1445 Bylsby Ave	Green Bay	WI	54303
T-39-WI-3089	U S Oil Green Bay West	1075 Hurlbut Ct	Green Bay	WI	54303
T-39-WI-3091	U S Oil Green Bay East	1910 N Quincy St	Green Bay	WI	54302
T-39-WI-3071	Koch Junction City	Junction US 10 & 34N	Junction City	WI	54443
T-39-WI-3069	Terminal Oil Group Ltd	3910 Terminal Road	Madison	WI	53704
T-39-WI-3088	US Oil Madison	4306 Terminal Dr	Madison	WI	53558
T-39-WI-3065	CENEX McFarland	4103 Triangle St	McFarland	WI	53558
T-39-WI-3067	CITGO McFarland	4606 Terminal Drive	McFarland	WI	53558
T-39-WI-3072	Koch McFarland	4505 Terminal Drive	McFarland	WI	53558
T-39-WI-3079	Mobil Oil Madison	4516 Sigglekow Road	McFarland	WI	53558
T-39-WI-3083	Center Terminal Co - Madison	4009 Triangle St Hwy 51 S	McFarland	WI	53558
T-39-WI-3062	Amoco Oil Milwaukee	9101 North 107th Street	Milwaukee	WI	53201
T-39-WI-3068	CITGO Milwaukee	9235 North 107th Street	Milwaukee	WI	53224
T-39-WI-3073	Koch Milwaukee	9343 North 107th Street	Milwaukee	WI	53224
T-39-WI-3076	Marathon Milwaukee	9125 North 107th St	Milwaukee	WI	53224
T-39-WI-3084	US Oil Milwaukee	9135 North 107th Street	Milwaukee	WI	53224
T-39-WI-3086	U.S. Oil Milwaukee-North	9521 North 107th Street	Milwaukee	WI	53224
T-39-WI-3090	Clark Rfg Milwaukee	9451 North 107th Street	Milwaukee	WI	53224
T-39-WI-3087	Williams Pipe Line Mosinee	2007 Old Highway 51	Mosinee	WI	54455
T-39-WI-3063	Amoco Oil Superior	2904 Winter Street	Superior	WI	54880
T-39-WI-3080	Murphy Oil Superior	2407 Stinson Ave	Superior	WI	54880
T-39-WI-3074	Koch Waupun	Route Two	Waupun	WI	53963
T-55-WV-3181	Exxon USA Charleston	Standard St & MacCorkle Ave	Charleston	WV	25314

TCN	Terminal Name	Address	City	State	Zip
T-55-WV-3182	Pennzoil Products Charleston	1015 Barlow Dr	Charleston	WV	25333
T-55-WV-3188	Baker Oil Co	US 60 Hughes Creek Rd	Hugheston	WV	25110
T-54-WV-1697	Ashland Petro TriState-Kenova	237 23rd Street	Kenova	WV	25530
T-55-WV-3183	Ergon West Virginia Inc.	Rt 2 South	Newell	WV	26050
T-55-WV-3184	Go-Mart St Albans	Oliver & Terminal Rd	St Albans	WV	25177
T-55-WV-3185	St Marys Refining	201 Barkwill St	St Marys	WV	26170
T-55-WV-3186	Guttman Oil Star City	437 Industrial Ave	Star City	WV	26505
T-55-WV-3187	Petroleum Fuel Weirton	3048 Birch Drive	Weirton	WV	26062
T-83-WY-4053	Kaneb Pipe Line Co - Cheyenne	1112 Parsley Blvd	Cheyenne	WY	82007
T-83-WY-4055	Frontier Refining Cheyenne	2700 East Fifth Street	Cheyenne	WY	82007
T-83-WY-4052	Little America Refining Casper	5100 E Hwy 20-26	Evansville	WY	82636
T-83-WY-4056	Wyoming Refining Newcastle	740 W Main	Newcastle	WY	82701
T-83-WY-4051	Conoco Rock Springs	90 Foot Hill Blvd	Rock Springs	WY	82902
T-83-WY-4050	Conoco Sheridan	3404 Highway 87	Sheridan	WY	82801
T-83-WY-4054	Sinclair Oil	East Lincoln Highway	Sinclair	WY	82334

[FR Doc. 98–3079 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–F

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Alcoholism and Drug Dependence	March 16, 1998	Washington Plaza Hotel.
Aging and Clinical Geriatrics	March 17, 1998	DoubleTree Park Terrace.
Endocrinology	March 19–20, 1998	Crowne Plaza Hotel.
Surgery	March 21, 1998	Crowne Plaza Hotel.
Mental Health and Behavioral Sciences	March 23–24, 1998	Holiday Inn Central.
Nephrology	March 26–27, 1998	Crowne Plaza Hotel.
Gastroenterology	March 26–27, 1998	Washington Plaza Hotel.
Immunology	March 30–31, 1998	Holiday Inn Central.
Respiration	April 1–2, 1998	Holiday Inn Central.
Hematology	April 2, 1998	Washington Plaza Hotel.
Neurobiology	April 6–8, 1998	Holiday Inn Central.
Cardiovascular Studies	April 16–17, 1998	Crowne Plaza Hotel.
General Medical Science	April 17, 1998	Crowne Plaza Hotel.
Infectious Diseases	April 20–21, 1998	Washington Plaza Hotel.
Oncology	April 23–24, 1998	St. James Hotel.
Medical Research Service Merit Review Committee	June 4, 1998	Washington Plaza Hotel.

Crowne Plaza Hotel, 1001—14th Street, NW, Washington, DC 20005
DoubleTree Park Terrace, 1515 Rhode Island Avenue, NW, Washington, DC 20005
Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005
St. James Hotel, 950—24th Street, NW, Washington, DC 20037
Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each speciality by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 275–6634, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittees may be obtained from this source.

Dated: January 29, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–2972 Filed 2–5–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-031-FOR]

Arkansas Regulatory Program

Correction

In proposed rule document 98–530 beginning on page 1396, in the issue of Friday, January 9, 1998, make the following corrections:

(1) On page 1397, in the third column:

(a) In the first paragraph, in the eighth line ''five responsibility'' should read ''five year responsibility''.

(b) Under paragraph heading 6, in the fourth line ''greater 70'' should read ''greater of 70''.

(c) Under paragraph heading 7, three lines from the bottom ''we disturbed'' should read ''were disturbed''.

(2) On page 1398, in the first column:

(a) Under paragraph heading 8, in paragraph (c), in the thirteenth line from the bottom ''A Ground cover'' should read ''(4) Ground cover''.

(b) In the eighth line from the bottom ''sill not reduce'' should read ''will not reduce''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

Correction

In notice document 98–2406 appearing on page 5411, in the issue of Monday, February 2, 1998, make the following correction:

On page 5411, in the first column, the **DATES** section should read:

DATES: The meeting will be held on February 18, 1998, 9:00 a.m. PST.

BILLING CODE 1505-01-D

Friday
February 6, 1998

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5955–1]

RIN 2060–AE34

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules and notice of public hearing.

SUMMARY: These proposed national emission standards for hazardous air pollutants (NESHAP) would limit emissions of hazardous air pollutants (HAP) from oil and natural gas production and natural gas transmission and storage facilities. These proposed rules would implement section 112 of the Clean Air Act (Act) and are based on the Administrator's determination that oil and natural gas production and natural gas transmission and storage facilities emit HAP identified on the EPA's list of 188 HAP.

The EPA estimates that approximately 65,000 megagrams per year (Mg/yr) of HAP are emitted from major and area sources in these source categories. The primary HAP emitted by the facilities covered by these proposed standards include benzene, toluene, ethyl benzene, mixed xylenes (collectively referred to as BTEX), and n-hexane. Benzene is carcinogenic and all can cause toxic effects following exposure. The EPA estimates that these proposed NESHAPs would reduce HAP emissions in the oil and natural gas production source category by 57 percent and in the natural gas transmission storage source category by 36 percent.

Also, the EPA is amending the list of source categories established under section 112(c) of the Act. Natural gas transmission and storage is being listed as a category of major sources and oil and natural gas production is being listed as a category of area sources in addition to its major source listing.

DATES: *Comments.* Comments must be received on or before April 7, 1998. For information on submitting electronic comments see the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for the oil and natural gas production and the natural gas transmission and storage. If anyone contacts the EPA requesting to speak at a public hearing by March 9, 1998, a public hearing will be held on March 23, 1998, beginning at 9:30 a.m. Persons interested in attending the hearing should notify Ms. JoLynn Collins, telephone (919) 541–5671, Waste and Chemical Processes Group (MD–13), to verify that a hearing will occur.

Request to Speak at a Hearing. Persons wishing to present oral testimony must contact the EPA by March 9, 1998, by contacting Ms. JoLynn Collins, Waste and Chemical Processes Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention: Docket No. A–94–04, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of comments also be sent to Stephen Shedd, USEPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5397, fax (919) 541–0246 and E-mail: Shedd.Steve@EPAMAIL.EPA.GOV. Comments and data may also be submitted electronically by following the instructions listed in **SUPPLEMENTARY INFORMATION**. No confidential business information (CBI) should be submitted through e-mail.

Background Information Document. The background information document (BID) may be obtained from the U.S. Environmental Protection Library (MD–35), Research Triangle Park, NC 27711, telephone (919) 541–2777. Please refer to ''National Emissions Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage—Background Information for Proposed Standards'' (EPA–453/R–94–079a, April 1997) for the BID. This document may also be obtained electronically from the EPA's Technology Transfer Network (TTN) (see **SUPPLEMENTARY INFORMATION** for access information).

Docket. A docket, No. A–94–04, containing information considered by the EPA in development of the proposed standards for the oil and natural gas production and natural gas transmission and storage source categories, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). The proposed regulations, BID, and other supporting information are available for inspection and copying. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Ms. Martha Smith, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–2421, or electronically at: smith.martha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Condensate tank batteries, glycol dehydration units, natural gas processing plants, and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 63.760 and 63.1270 of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–94–04. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

This document, the proposed regulatory texts, and BID are available in Docket No. A–94–04 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**) or

access through the EPA web site at: http://www.epa.gov/ttn/oarpg.

The following outline is provided to aid in reading the preamble to the proposed oil and natural gas production and natural gas transmission and storage NESHAPs.

I. Background

A. Purpose of the Proposed Standards

The Act was developed, in part,

* * * to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population [the Act, section 101(b)(1)].

Oil and natural gas production and natural gas transmission and storage facilities are major and area sources of HAP emissions. The EPA estimates that approximately 65,000 Mg/yr of HAP are emitted from major and area sources in the oil and natural gas production source category and 320 Mg/yr of HAP are emitted from major and area sources in the natural gas transmission and storage source category. The primary HAP associated with oil and natural gas that have been identified include BTEX and n-hexane. Exposure to these chemicals has been demonstrated to cause adverse health effects. The adverse health effects associated with the exposure to these specific HAP are discussed briefly in the following paragraphs. In general, these findings have only been shown with concentrations higher than those in the ambient air.

Benzene, one of the HAP associated with this NESHAP, has been classified as a known human carcinogen on the basis of observed increases in the incidence of leukemia in exposed workers. In addition, short-term inhalation of high benzene levels may cause nervous system effects such as drowsiness, dizziness, headaches, and unconsciousness in humans. At even higher concentrations of benzene, exposure may cause death, while lower concentrations may irritate the skin, eyes, and upper respiratory tract. Long-term inhalation exposure to benzene may cause various disorders of the blood, and toxicity to the immune system. Reproductive disorders in women, as well as developmental effects in animals, have also been reported for benzene exposure.

Short-term inhalation of relatively high concentrations of toluene by humans may cause nervous system effects such as fatigue, sleepiness, headaches, and nausea, as well as irregular heartbeat. Repeated exposure to high concentrations may cause additional nervous system effects, including incoordination, tremors, decreased brain size, involuntary eye movements, and may impair speech, hearing, and vision. Long-term exposure of toluene in humans has also been reported to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children whose mothers were exposed to toluene before birth may suffer nervous system dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may also increase the risk of spontaneous abortion. Not enough information exists to determine toluene's carcinogenic potential.

Short-term inhalation of high levels of ethyl benzene in humans may cause throat and eye irritation, chest constriction, and dizziness. Long-term inhalation of ethyl benzene by humans may cause blood disorders. Animal studies have reported blood, liver, and kidney effects associated with ethyl benzene inhalation. Birth defects have been reported in animals exposed via inhalation; whether these effects may occur in humans is not known. Not enough information exists concerning ethyl benzene for determination of its carcinogenic potential.

Short-term inhalation of high levels of mixed xylenes (a mixture of three closely-related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of high levels of xylene in humans may result in nervous system effects such as headaches, dizziness, fatigue, tremors, and incoordination. Other reported effects noted include labored breathing, heart palpitation, severe chest pain, abnormal heart functioning, and possible effects on the blood and kidneys. Developmental effects have been reported from xylene exposure via inhalation in animals. Not enough information exists to determine the carcinogenic potential of mixed xylenes.

Short-term inhalation of high levels of n-hexane in humans may cause mild central nervous system effects (dizziness, giddiness, slight nausea, and headache) and irritation of the skin and mucous membranes. Long-term inhalation exposure of high levels of n-hexane in humans has been reported to

cause nerve damage expressed as numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. Reproductive effects have been reported in animals after inhalation exposure (testicular damage in rats). Not enough information exists concerning n-hexane for determination of its carcinogenic potential.

The EPA estimates that the proposed NESHAP would reduce HAP emissions from those impacted HAP emission points in the oil and natural gas production source category by 57 percent and would reduce HAP emissions from triethylene glycol (TEG) dehydration units in the natural gas transmission and storage source category by 36 percent.

B. Technical Basis for the Proposed Standards

Section 112 of the Act regulates stationary sources of HAP. Section 112(b) of the Act lists 188 chemicals, compounds or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emission of HAP from stationary sources by establishing national emission standards.

Section 112(a)(1) of the Act defines a major source as:

* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

An area source is defined as a stationary source that is not a major source.

For major sources, the statute requires the EPA to establish standards to reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT). Further, the EPA must establish standards that are no less stringent than the level of control defined under section 112(d)(3) of the Act, often referred to as the MACT floor. The proposed standards for major sources in the oil and natural gas production and natural gas transmission and storage source categories are based on the MACT floor for these source categories.

In developing standards for area sources of HAP emissions, the EPA has discretion to establish standards based on (1) MACT, (2) generally available control technology (GACT), or (3) management practices that reduce the emission of HAP. The proposed standards for selected area source TEG dehydration units are based on GACT. There is no statutory ''floor'' level of control for GACT.

Information on industry processes and operations, HAP emission points, and HAP emission reduction techniques were collected through section 114 questionnaires that were distributed to companies in the oil and natural gas production and natural gas transmission and storage source categories. The companies provided information on representative facilities.

This information was used, in part, as the technical basis in determining the MACT level of control for the emission points covered under the proposed standards. In addition to information collected in the questionnaires, the EPA considered information available in the general literature, as well as information submitted by industry on technical issues subsequent to the questionnaire responses.

C. Stakeholder and Public Participation

Numerous representatives of the oil and natural gas industry and other interested parties were consulted in the development of the proposed standards. Industry assisted in data gathering, arranging site visits, technical review, and sharing of industry-sponsored data collection activities. A data base comprised of all industry-supplied information was developed in the evaluation of HAP emissions and air emission controls for these proposed standards.

Estimates of HAP emissions from representative facilities in each industry segment were developed by the EPA. To estimate HAP emissions from glycol dehydration units in both the oil and natural gas production and natural gas transmission and storage source categories, the EPA utilized an emission model, GRI-GLYCalc™ (Version 3.0), developed by the Gas Research Institute (GRI). Inputs used by the EPA for this model were primarily developed from information supplied by industry.

The trade associations and organizations that participated in the development of the proposed rules on a regular basis include (1) the American Petroleum Institute (API) and (2) GRI. Other interested parties that participated in the development of the proposed standards include the Independent Petroleum Association of America (IPAA), the Audubon Society, the Interstate Oil and Gas Compact Commission (IOGCC), the American Gas Association (AGA), and the Interstate Natural Gas Association of America (INGAA).

These interested parties, in addition to individual companies in the oil and natural gas industry, were offered the opportunity to provide technical review and comment during the development of the proposed standards. In addition, interested parties provided technical review and comment on the preliminary draft BID and preliminary draft standards.

Representatives from other EPA offices and programs were included in the regulatory development process. These representatives' responsibilities included review and internal concurrence with the proposed standards. Therefore, the EPA believes that the impact of these proposed regulations to other EPA offices and programs has been adequately considered during the development of these regulations.

This notice also solicits comment on the proposed standards and offers a chance for a public hearing on the proposals in order to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

II. Source Category Descriptions

A. Source Category List

Oil and natural gas production was included on the EPA's initial list of categories of major sources of HAP emissions established under section 112(c)(1) of the Act. This list was published on July 16, 1992 (57 FR 31576).

The EPA included natural gas transmission and storage in the proposed initial listing of source categories that was published in 1991. The EPA's preliminary analysis that led to natural gas transmission and storage being listed as a source category was based on the estimated emissions of the HAP ethylidene dichloride (1,1-dichloroethane). Comments received on the proposed initial list indicated that these estimates were not accurate.

Based on its review of comments for the final initial list, the EPA decided that it did not have sufficient available information that supported that this source category could contain a major source of HAP. Thus, the natural gas transmission and storage source category was not included as a distinct source category in the final initial list of source categories of major sources of HAP.

In the development of the proposed standards for the oil and natural gas production source category, information was obtained on glycol dehydration unit BTEX emissions that are representative of both oil and natural gas production facilities and natural gas transmission and storage facilities. The information obtained indicates that natural gas transmission and storage facilities have

the potential to be major HAP sources. In addition, industry has stated to the EPA that there are major source TEG dehydration units in the natural gas transmission and storage source category. Therefore, the EPA is amending the source category list to add the natural gas transmission and storage source category as a major source category and, with this notice, is proposing a regulation that would apply to major sources in this source category.

The EPA has made a determination that there are area sources in the oil and natural gas production source category that present a threat of adverse effects to human health and the environment. Based on this determination, referred to as an ''area source finding,'' the EPA is amending the source category list to add oil and natural gas production to the list of area source categories established under section 112(c)(1) of the Act. The area source finding supporting this listing is discussed in section V of this preamble.

Glycol dehydration units located at natural gas transmission and storage facilities have similar HAP emissions and emission potential to those located at oil and natural gas production facilities. The EPA is currently evaluating whether TEG dehydration units located at natural gas transmission and storage facilities that are area sources constitute an unacceptable risk to public health or the environment and should be listed and regulated as an area source. The EPA is soliciting information and comment in this notice regarding the location and HAP emissions from area source TEG dehydration units in the natural gas transmission and storage source category (see sections V and X for further discussion).

The documentation supporting the listing of oil and natural gas production as a source category (''Documentation for Developing the Initial Source Category List,'' EPA–450/3–91–030, July 1992) describes the source category as including

* * * the processing and upgrading of crude oil prior to entering the petroleum refining process and natural gas prior to entering the transmission line.

During the development of the proposed rules, industry requested that HAP emissions associated with distribution of hydrocarbon liquids after the point of custody transfer be addressed within the scope of the organic liquids distribution (non-gasoline) source category and not the oil and natural gas production source category. Custody transfer, as defined in a previous rule, means transfer, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation. Industry representatives commented that there are differences in the HAP emission potential from facilities involved in the distribution of petroleum liquids after the point of custody transfer relative to other processes and operations in the oil and natural gas production source category.

The EPA, after evaluation of industry comments, is proposing that HAP emissions associated with the distribution of hydrocarbon liquids after the point of custody transfer would be more appropriately addressed as part of the organic liquids distribution (non-gasoline) source category. Therefore, the proposed rule for the oil and natural gas production source category would not apply to those facilities that distribute hydrocarbon liquids after the point of custody transfer (see proposed regulation for definition of custody transfer).

Facilities involved in the organic liquids distribution (non-gasoline) sector of the petroleum industry include (but are not limited to) gathering stations, trunk-line stations, and station storage vessel farms. The organic liquids distribution (non-gasoline) source category is scheduled for regulation under section 112 of the Act by November 15, 2000.

The EPA plans to define the organic liquids distribution (non-gasoline) source category (within that rulemaking) as including those facilities that distribute hydrocarbon liquids after the point of custody transfer. This will eliminate the potential for overlapping regulatory requirements between the oil and natural gas production and organic liquids distribution (non-gasoline) source categories.

B. Hazardous Air Pollutant Types

The primary HAP associated with the oil and natural gas production and natural gas transmission and storage source categories include BTEX and n-hexane. In addition, available information indicates that 2,2,4-trimethylpentane (iso-octane), formaldehyde, acetaldehyde, naphthalene, and ethylene glycol may be present in certain process and emission streams. Carbon disulfide (CS_2), carbonyl sulfide (COS), and BTEX may also be present in the tail gas streams from amine treating and sulfur recovery units.

C. Facility Types

The oil and natural gas production and natural gas transmission and storage source categories consist of various facilities used to recover and treat products (hydrocarbon liquids and gases) from production wells. These source categories include the processing, storage, and transport of these products to (1) the point of custody transfer for the oil and natural gas production source category or (2) the point of delivery to the local distribution company (LDC) or final end user for the natural gas transmission and storage source category. The facilities in the oil and natural gas production source category that the EPA is proposing requirements for include (1) glycol dehydration units, (2) condensate tank batteries, and (3) natural gas processing plants. The EPA is also proposing requirements for glycol dehydration units located at facilities in the natural gas transmission and storage source category.

1. Glycol Dehydration Units

The most widely used dehydration process in these source categories is glycol dehydration. TEG dehydration units account for the majority of glycol dehydration units, with ethylene glycol (EG) and diethylene glycol (DEG) dehydration units accounting for the remaining population of glycol dehydration units. In the dehydration process, natural gas is contacted with glycol to remove water present in the natural gas. Some portion of the HAP present in the natural gas are also removed by the glycol. The ''rich'' glycol is then heated in a reboiler to remove water vapor and other contaminants prior to recirculation in the process. The reboiler vent of the glycol dehydration unit is the primary identified source of HAP emissions for these source categories.

2. Tank Batteries

The term ''tank battery'' refers to the collection of process equipment used to separate, upgrade, store, and transfer extracted petroleum products and separated streams. These facilities handle crude oil and condensate up to the custody transfer of these products to facilities in the organic liquids distribution (non-gasoline) source category. Separation and dehydration of natural gas can also occur at a tank battery. A tank battery may serve an individual production well or a collection of wells in the field.

Tank batteries can be broadly classified as black oil tank batteries or condensate tank batteries. Black oil means hydrocarbon (petroleum) liquid with a gas-to-oil ratio (GOR) less than 50 cubic meters (m^3) (1,750 cubic feet (ft^3)) per barrel and an API gravity less than

40 degrees (°). Condensate means hydrocarbon liquid that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions. The majority of tank batteries, approximately 85 percent, are black oil tank batteries and the remainder are condensate tank batteries.

The primary identified HAP emission points at tank batteries include (1) process vents associated with glycol dehydration units and (2) tanks and vessels storing volatile oils, condensate, and other similar hydrocarbon liquids that have a flash emission potential. Condensate tank batteries typically incorporate a glycol dehydration unit in the process system.

The EPA proposes to exempt from the oil and natural gas production NESHAP those facilities that handle black oil exclusively. This exemption is based on the EPA's proposed interpretation of associated equipment in section 112(n)(4) of the Act. The EPA is proposing that associated equipment be defined as all equipment associated with a production well up to the point of custody transfer, except that glycol dehydration units and storage vessels with flash emissions would not be associated equipment. The EPA believes that this proposed definition will provide the relief that Congress intended in section 112(n)(4) for the numerous, widely dispersed, small emission points in the oil and natural gas production source category (such as black oil tank batteries) while preserving the EPA's ability to require appropriate MACT or GACT controls for the most significant identified HAP emission points in this source category (see section VII of this preamble for a detailed discussion of associated equipment).

3. Natural Gas Processing Plants

A natural gas processing plant conditions natural gas by separating natural gas liquids (NGLs) from field natural gas and, in addition, may fractionate the NGLs into separate components such as ethane, propane, butane, and natural gasoline. Natural gas processing may also include amine treating and sulfur recovery units onsite to treat natural gas streams.

The primary identified HAP emission points at natural gas processing plants include (1) the glycol dehydration unit reboiler vent, (2) storage tanks, particularly those tanks that handle volatile oils and condensates that may be significant contributors to overall HAP emissions due to flash emissions, and (3) equipment leaks from those components handling hydrocarbon streams that contain HAP constituents. Other potential HAP emission point process vents are the tail gas stream from amine treating processes and sulfur recovery units. Limited information has been identified on the potential for HAP emissions from these operations. Recent research published by GRI indicates that these emission points have the potential to be significant sources of HAP emissions. Comment is requested on potential HAP emissions and emission rates from these operations and potential applicable air emission controls.

4. Natural Gas Transmission and Storage Facilities

The natural gas transmission and storage source category consists of transmission pipelines used for the long distance transport of natural gas and underground natural gas storage facilities. These facilities typically extend from the natural gas processing plant to the local distribution company that delivers natural gas to the final end user. In cases where there is no processing, these facilities may be located anywhere from the well to the final end user.

Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

Underground natural gas storage facilities are subsurface facilities that store natural gas that has been transferred from its original location for the primary purpose of load balancing. Load balancing is the process of equalizing the receipt and delivery of natural gas (i.e., utilized for stockpiling natural gas for periods of high demand, in particular, the winter heating season). Processes and operations that may be located at an underground storage facility include, but are not limited to, compression and dehydration.

The primary identified HAP emission point at natural gas transmission and storage facilities is the glycol dehydration unit reboiler vent.

5. Facility Populations

There are a large number of glycol dehydration units and tank batteries in the United States. The estimated population of glycol dehydration units presented in various industry studies range from under 20,000 to over 45,000 glycol dehydration units.

For the purpose of estimating nationwide impacts of this proposed NESHAP, the EPA selected 40,000 as the estimated total domestic population of all types of dehydration units. Of this total, an estimated 38,000 are glycol dehydration units and 2,000 are solid desiccant dehydration units.

Based on typical tank battery configurations and two studies conducted for the API, the EPA estimates that there are approximately 94,000 tank batteries. Of this total, the EPA estimates that there are 81,000 black oil tank batteries and 13,000 condensate tank batteries.

In 1996, according to the Oil and Gas Journal, there were approximately 700 natural gas processing plants.

The natural gas transmission and storage source category includes over 480,000 kilometers (300,000 miles) of high-pressure transmission pipelines and over 300 underground storage facilities. A recent GRI report estimates that there are 1,900 compressor stations located along transmission pipelines.

The EPA estimates that approximately 440 existing facilities would be affected by the proposed requirements of the production NESHAP for major sources. In addition, the EPA estimates that out of an estimated 37,000 glycol dehydration units at area sources of HAP, 520 existing TEG dehydration units would be affected by the proposed standards for area sources because they meet or exceed the throughput and benzene emission action levels and are also located in counties designated as urban (see section III of this preamble for a discussion of area source action levels).

The EPA estimates that about 5 existing facilities would be affected by the proposed requirements of the natural gas transmission and storage NESHAP for major sources.

III. Summary of Proposed Standards

A. Proposed Standards for Oil and Natural Gas Production for Major and Area Sources

The proposed action would amend title 40, chapter I, part 63 of the Code of Federal Regulations (CFR) by adding a new subpart HH—National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities. The proposed standards would apply to owners and operators of facilities that process, upgrade, or store (1) hydrocarbon liquids (with the exception of those facilities that handle black oil exclusively) to the point of custody transfer and (2) natural gas from the well up to and including the natural gas processing plant. Standards are

proposed that would limit HAP emissions from the following emission points at facilities that are major sources of HAP (1) process vents on glycol dehydration units, (2) storage vessels with flash emissions, and (3) equipment leaks at natural gas processing plants. In addition, standards are proposed that would limit HAP emissions from selected area source TEG dehydration units.

As required by the Clean Air Act, the determination of a facility's potential-to-emit HAP and, therefore, its status as a major or area source, is based on the total of all HAP emissions from all activities at a facility, except that emissions from oil or gas exploration or production wells (and their associated equipment) and emissions from pipeline compressor or pump stations may not be combined. A definition of associated equipment is proposed in the proposed rulemaking. Further discussion of the definition of associated equipment is presented in section VII(A) of this preamble.

1. General Standards

The proposed standards for oil and natural gas production facilities would require that the owner or operator of a major source of HAP reduce HAP emissions from glycol dehydration units and storage vessels through the application of air emission control equipment or pollution prevention measures. In addition, the owner or operator of a natural gas processing plant that is a major source would be required to reduce HAP emissions from equipment leaks by establishing a leak detection and repair (LDAR) program.

The owner or operator of selected area source TEG dehydration units that meet the criteria in the proposed standards would be required to reduce HAP emissions from those TEG dehydration units.

Owners and operators of facilities that process and store black oil exclusively would not be subject to the proposed standards. Black oil is defined in the proposed oil and natural gas production NESHAP as a hydrocarbon liquid with (1) a GOR less than 50 m^3 (1,750 ft^3) per barrel and (2) an API gravity less than 40°.

2. Glycol Dehydration Unit Provisions

The proposed standards would require that all process vents at glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand cubic meters per day (m^3/day) (3.0 million standard cubic feet per day (MMSCF/D), on an annual average basis, or (2) if benzene emissions from the major source glycol dehydration unit are less than 0.9 Mg/yr (1 tpy).

HAP emissions from process vents at certain area source TEG dehydration units would be required to be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, or (2) if benzene emissions from the area source glycol dehydration unit are less than 0.9 Mg/yr (1 tpy). The proposed requirements are the same for existing and new (1) major source glycol dehydration units and (2) selected area source TEG dehydration units that meet the specified criteria.

In its analysis of available data, the EPA could not determine any level of emission control for those glycol dehydration units with low annual natural gas throughputs (less than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, or a low benzene emission rate (less than 0.9 Mg/yr (1 tpy)). Thus, the EPA is proposing the annual throughput and benzene emission rate cutoffs for major sources. In addition, the EPA's analysis indicated that control of HAP emissions below these cutoff levels was not cost-effective for area source glycol dehydration units.

The EPA is proposing an additional applicability criteria for area source TEG dehydration units. The additional proposed criteria would limit air emission controls to those selected area source TEG dehydration units located in counties classified as urban areas.

Since the Act does not provide a definition of urban area, the EPA used the U.S. Department of Commerce's Bureau of the Census statistical data to classify every county in the U.S. into one of three classifications (1) Urban-1 counties, (2) Urban-2 counties, or (3) Rural counties. Urban-1 counties consist of counties with metropolitan statistical areas (MSA) with a population greater than 250,000. Urban-2 counties are defined as all other counties designated urban by the Bureau of Census (areas which comprise one or more central places and the adjacent densely settled surrounding fringe that together have a minimum of 50,000 persons). The urban fringe consists of contiguous territory having a density of at least 1,000 persons per square mile. Rural counties are those counties not designated as urban by the Bureau of the Census (see docket item A–94–04, II–I–9).

Figure 1 shows the methodology for assigning counties to each of the three classifications. As seen in this diagram, if any part of a county contains an Urban-1 area then the entire county is classified as an Urban-1 area. For all remaining counties, if greater than 50 percent of the population is classified as urban, then that county is classified as an Urban-2 area. Counties not designated as Urban-1 or Urban-2 by the above method are classified as Rural areas.

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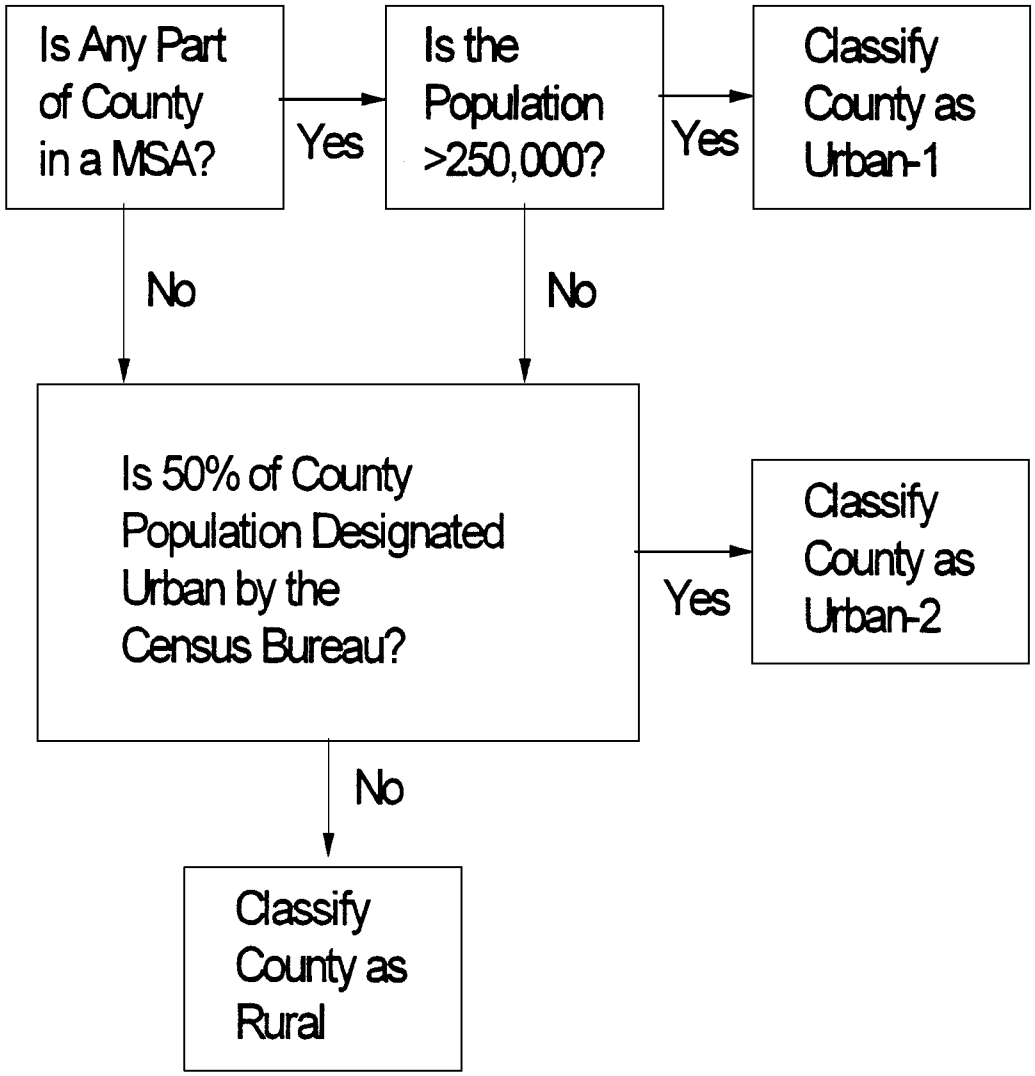

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Figure 1. Urban/Rural County Classification Methodology

Thus, only those area source TEG dehydration units that (1) meet or exceed the actual natural gas throughput applicability criteria, (2) meet or exceed the benzene emission rate applicability criteria, and (3) are located in a county classified as either Urban-1 or Urban-2 would be required to apply air emission controls on all process vents at those units.

The EPA also evaluated a risk-based distance applicability threshold criterion as an alternative to the urban area applicability criteria. This method (subsequently referred to as the ''risk-distance'' method) would target those area source TEG dehydration units for regulation that present a potential health risk to exposed populations. Under the risk-distance method, each area source TEG dehydration unit that may be subject to control, based on actual natural gas throughput and benzene emission rate, would have the option of conducting a site-specific risk assessment. If this site-specific risk assessment resulted in a maximum incremental lifetime cancer risk above some threshold level, then the source would be required to install controls necessary to reduce that risk to an acceptable level.

After its evaluation of applicability alternatives, the EPA rejected the risk-distance method. The risk based approach would focus solely on the protection of the most exposed individual rather than the general population. In addition, the EPA believes that the use of the urban area as an applicability criteria provides ease of implementation. This approach (1) limits the group of affected sources to a well defined urban area group, (2) minimizes the non-productive burden by exempting the non-urban area group of owners-operators and regulatory agencies from compliance assessments, and (3) provides a straightforward approach to compliance. Area sources will not need to perform analyses to determine if they are affected by the rule if they screen out based on the urban area criteria. Only those owner-operators of area source TEG dehydration units in urban areas would need to evaluate the need for control devices. By contrast, under the risk distance approach, all owner-operators would need to do an analysis. The EPA is requesting comment, along with supporting documentation, on the use of a risk-distance criteria for regulation of area source TEG dehydration units as an alternative to the urban area criteria (see section X of this preamble).

Glycol dehydration units that are required to use air emission controls would be required to connect each process vent on the glycol dehydration unit to an air emission control system that reduces HAP emissions by 95 percent or greater (or to an outlet concentration of 20 parts per million by volume (ppmv) for combustion devices). Pollution prevention measures, such as process modifications that reduce the amount of HAP emissions generated, would be allowed as an alternative, provided they achieve a HAP emission reduction, from uncontrolled levels, of 95 percent or greater.

3. Storage Vessel Provisions

Standards are proposed for existing and new storage vessels containing hydrocarbon liquids (other than black oil) that are located at major HAP sources. The types of storage vessels that would be regulated are those with the potential for flash emissions and that have an actual throughput of hydrocarbon liquids equal to or greater than 500 barrels per day (BPD).

Flash emissions from storage occur when a hydrocarbon liquid with a high vapor pressure flows from a pressurized vessel into a vessel with a lower pressure. Flash emissions typically occur when a hydrocarbon liquid, such as condensate, is transferred from a production separator to a storage vessel. The proposed standards for storage vessels with the potential for flash emissions would require that a storage vessel be equipped with an air emission control system if the hydrocarbon liquid in the storage vessel has a GOR equal to or greater than 50 m^3 (1,750 ft^3) per barrel or an API gravity equal to or greater than 40° (i.e., the storage vessel has a potential for flash emission losses). In addition, the storage vessel must have an actual throughput of hydrocarbon liquids equal to or greater than 500 BPD.

A storage vessel containing a hydrocarbon liquid subject to control under the proposed standards would have to be equipped with a cover vented through a closed-vent system to a control device that recovers or destroys HAP emissions with an efficiency of 95 percent or greater (or to an outlet concentration of 20 ppmv for combustion devices). The EPA has included the 20 ppmv cutoff for cases where the HAP emission concentration is already low, and meeting a 95 percent reduction in emissions cannot be achieved.

A pressurized storage vessel that is designed to operate as a closed system would be considered in compliance with the proposed requirements for storage vessels. External and internal floating roofs that meet certain design criteria would also be allowed.

4. Standards for Equipment Leaks

The proposed rule requires owners and operators of natural gas processing plants that are major HAP sources to control HAP emissions from leaks from each piece of equipment that contains or contacts a liquid or gas that has a total HAP concentration equal to or greater than 10 percent by weight. The proposed equipment leak standards would not apply to equipment that operates less than 300 hours per year.

For equipment subject to these standards at either an existing or new source, the owner or operator is required to implement a LDAR program and perform equipment modifications, where necessary. Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located on the Alaskan North Slope would be exempt from some of the routine LDAR monitoring requirements.

5. Air Emission Control Equipment Requirements

Specific performance and operating requirements are proposed for each control device installed by the owner or operator. Closed-vent systems would be required to operate with no detectable emissions. Any type of control device would be allowed that reduces the mass content of either total organic compounds (less methane and ethane) or total HAP in the gases vented to the device by 95 percent by weight or greater (or to an outlet concentration of 20 ppmv for combustion devices).

Certain specifications for covers apply based on the type of cover and where the cover is installed. Requirements are specified for vapor leak-tight covers, and external and internal floating roofs installed on storage vessels.

6. Test Methods and Procedures

An owner or operator must be able to demonstrate that exemption from control criteria are met when controls are not applied. For example, owners or operators of glycol dehydration units that do not install air emission controls because the benzene emission rate from the unit is less than 0.9 Mg/yr (1 tpy) must be able to demonstrate that the benzene emission rate from the unit is less than 0.9 Mg/yr (1 tpy). In general, the selected exemption criteria minimize the demonstration burden on owners and operators.

Procedures for demonstrating the HAP emission reduction efficiency of control devices and HAP concentration would be consistent with procedures established in previously promulgated

NESHAP that apply to emission sources similar to those addressed in the proposed standards. Engineering calculations, modeling (using EPA-approved models), and previous test results will generally be acceptable means of demonstrating compliance, except where such means are not conclusive. Test procedures are specified in the proposed rule for use when testing is required to demonstrate compliance.

An alternative test procedure is provided to demonstrate control efficiency for when a condenser is used for controlling emissions from a glycol dehydration unit reboiler vent. The inclusion of the alternative test procedure is appropriate in this standard because of difficulties associated with testing the inlet to a condenser in this application.

Procedures and test methods are also specified for detection of equipment leaks.

7. Monitoring and Inspection Requirements

The proposed standards would require that the owner or operator periodically inspect and monitor air emission control equipment. Visual inspections and leak detection monitoring is required for certain types of covers to ensure gaskets and seals are in good condition and for closed-vent systems to ensure all fittings remain leak-tight.

An owner or operator would also be required to visually inspect and test covers and closed-vent systems to determine and ensure that they operate with no detectable emissions.

The proposed standards would also require semi-annual inspection and leak detection monitoring of covers and annual inspection and leak detection monitoring of closed-vent systems.

The proposed standards would require continuous monitoring of control device operation through the use of automated instrumentation. The automated instrumentation would be used to measure and record control device operating parameters indicating continuous compliance with the standards.

8. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements associated with the proposed standards would primarily be those specified in the part 63 General Provisions (40 CFR part 63, subpart A). Major sources would be subject to all of the requirements of the General Provisions with the exception that (1) owners or operators would be allowed up to one year from the effective date of the standards to submit the initial notification described in § 63.9, paragraph (b) of subpart A and (2) owners or operators are allowed to submit (a) excess emissions and continuous monitoring system (CMS) performance reports and (b) startup, shutdown, and malfunction reports semi-annually instead of quarterly. The EPA selected these specific exceptions due to the large number of facilities that would need to submit notifications or reports related to the proposed NESHAP. The EPA believes that these exceptions will not adversely affect the implementation of the proposed regulation or reduce its impact on HAP emissions.

Area sources would be subject to all of the requirements of the General Provisions with the exception that (1) owners or operators of existing area sources would be allowed up to one year from the effective date of the standards to submit the initial notification required by the General Provisions, (2) an owner or operator of an area source would not be required to develop and maintain a startup, shutdown, and malfunction plan and would only need to submit reports of malfunctions when they are not corrected within a specified time period, and (3) excess emissions and continuous monitoring reporting would be done annually, rather than as required by the General Provisions.

B. Proposed Standards for Natural Gas Transmission and Storage for Major Sources

The proposed standards would amend title 40, chapter I, part 63 CFR by adding a new subpart HHH—National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities. The standards would apply to owners and operators of facilities that process, upgrade, transport or store natural gas prior to delivery to a LDC or a final end user.

1. General Standards

The proposed rule would require that process vents on glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, or (2) if benzene emissions from the major source glycol dehydration unit are less than 0.9 Mg/yr (1 tpy). The proposed requirements are the same for existing and new glycol dehydration units.

Glycol dehydration units that are required to use air emission controls would be required to connect each process vent on the glycol dehydration unit to an air emission control system that reduces HAP emissions by 95 percent or more or to an outlet concentration of 20 ppmv for combustion devices. As with the proposed standards for the oil and natural gas production NESHAP, pollution prevention measures, such as process modifications that reduce the amount of HAP emissions generated, would be allowed as an alternative provided they achieve a HAP emission reduction of 95 percent or greater or to an outlet concentration of 20 ppmv for combustion devices.

The EPA had insufficient information available to determine whether (1) significant HAP-emitting storage vessels warranting control are located at natural gas transmission and storage facilities or (2) whether the same storage vessel regulatory controls being proposed for the oil and natural gas production source category should be applied to the natural gas transmission and storage source category. Therefore, the EPA is soliciting comment in this proposal (see section X) on whether the storage vessels being proposed for control under the oil and natural gas production regulation are similar to those that exist at natural gas transmission and storage facilities. The EPA is specifically requesting information on (1) the type(s) of storage vessels at natural gas transmission and storage facilities and (2) whether the existing control level of storage vessels at natural gas transmission and storage facilities is similar to the existing control level of storage vessels at oil and natural gas production facilities.

2. Air Emission Control Equipment Requirements

Specific performance and operating requirements are proposed for each control device installed by the owner or operator. Closed-vent systems would be required to operate with no detectable emissions. Any type of control device would be allowed that reduces the mass content of either total organic compounds (less methane and ethane) or total HAP in the gases vented to the device by 95 percent by weight or greater (or to an outlet concentration of 20 ppmv for combustion devices).

3. Monitoring and Inspection Requirements

The proposed monitoring and inspection requirements are (1) periodic control equipment monitoring, (2) periodic leak detection monitoring for closed-vent systems to ensure all fittings remain leak-tight, (3) semi-annual

inspection and leak detection monitoring of covers, (4) annual inspection and leak detection monitoring of closed-vent systems, and (5) continuous monitoring of control device operation. Continuous monitoring would require the use of automated instrumentation that would measure and record control device compliance operating parameters.

4. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements associated with the proposed standards would primarily be those specified in the part 63 General Provisions (40 CFR Part 63 subpart A). Major sources would be subject to all of the requirements of the General Provisions, except that (1) owners or operators would be allowed up to one year from the effective date of the standards to submit the initial notification required under § 63.9, paragraph (b) of subpart A and (2) owners or operators are allowed to submit excess emissions, CMS performance reports, and startup, shutdown, and malfunction reports semi-annually instead of quarterly. These exceptions were selected to maintain consistency between the major source provisions of these proposed regulations.

IV. Summary of Environmental, Energy and Economic Impacts

A. HAP Emission Reductions

For major sources, it is estimated by the EPA that the proposed oil and natural gas production standards for existing sources would result in a reduction of HAP emissions from 39,000 Mg/yr to 9,000 Mg/yr. In addition, HAP emissions would be reduced by 3,000 Mg/yr for new sources over the first 3 years after promulgation of these proposed standards.

For existing area source TEG dehydration units in the oil and natural gas production source category, the EPA estimates that the proposed standards would result in a reduction of HAP emissions from 19,000 Mg/yr to 16,000 Mg/yr. In addition, HAP emissions would be reduced by 330 Mg/yr for new sources over the first 3 years after promulgation of these proposed standards.

Tables 1 and 2 present the major and area source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates would occur from the implementation of the proposed standards for oil and natural gas production.

The EPA estimates that the proposed natural gas transmission and storage standards for existing sources would result in a reduction of HAP emissions from 320 Mg/yr to 210 Mg/yr. No new major sources are anticipated in the first three years after promulgation of this proposed NESHAP. Table 3 presents the major source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates would occur from the implementation of the proposed standards for existing natural gas transmission and storage facilities.

The air emission reductions achieved by these proposed standards, when combined with the air emission reductions achieved by other standards mandated by the Act, will accomplish the primary goal of the Act to

* * * enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.

TABLE 1.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS FOR THE PROPOSED OIL AND NATURAL GAS PRODUCTION STANDARDS FOR EXISTING AND NEW MAJOR SOURCES

Impact category	Existing	New
Estimated number of impacted facilities	440	44
Emission reductions (Mg/yr):		
HAP	30,000	3,000
VOC	61,000	6,100
Methane	7,000	700
Secondary environmental emission increases (Mg/yr):		
Sulfur oxides	<1	<1
Nitrogen oxides	5	<1
Carbon monoxide	<1	<1
Energy (Kilowatt hours per year)	38,000	3,800
Implementation costs (Million of July 1993 $):		
Total installed capital	6.5	0.7
Total annual	4.0	0.4

TABLE 2.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS FOR THE PROPOSED OIL AND NATURAL GAS PRODUCTION STANDARDS FOR EXISTING AND NEW AREA SOURCES

Impact category	Existing	New
Estimated number of impacted facilities	520	52
Emission reductions (Mg/yr):		
HAP	3,300	330
VOC	7,200	720
Methane	1,500	150
Secondary environmental emission increases (Mg/yr):		
Sulfur oxides	<1	<1
Nitrogen oxides	2	<1
Carbon monoxide	<1	<1
Energy (Kilowatt hours per year)	None	None
Implementation costs (Million of July 1993 $):		
Total installed capital	6.9	0.7
Total annual	6.2	0.6

TABLE 3.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS FOR THE PROPOSED NATURAL GAS TRANSMISSION AND STORAGE STANDARDS FOR EXISTING MAJOR SOURCES [a]

Impact category	Existing
Estimated number of impacted facilities	5
Emission reductions (Mg/yr):	
HAP	110
VOC	1,400
Methane	54
Secondary environmental emission increases (Mg/yr):	
Sulfur oxides	None
Nitrogen oxides	None
Carbon monoxide	None
Energy (Kilowatt hours per year)	None
Implementation costs (Thousand of July 1993 $):	
Total installed capital	57
Total annual	46

[a] No new major sources are anticipated for this source category after the effective date for new sources and in the first three years following promulgation of the proposed rule.

B. Secondary Environmental Impacts

Other environmental impacts are those associated with operation of certain air emission control devices. The adverse secondary air impacts would be minimal in comparison to the primary HAP reduction benefits from the implementation of the proposed control options for major and for selected area oil and natural gas sources. The estimated national annual increase in secondary air pollutant emissions that would result from the use of a flare to comply with the proposed standards is estimated to be less than 1.0 Mg (1.1 ton) for both sulfur oxide (SO_X) and carbon monoxide (CO) and less than 7 Mg (8 tons) for nitrogen oxides (NO_X). These estimates are for both major and area oil and natural gas production sources. There are no anticipated increases in secondary air pollutant emissions from the implementation of the proposed control options for major sources at natural gas transmission and storage facilities.

The adverse water impacts anticipated from the implementation of control options for the proposed standards are expected to be minimal. The water impacts associated with the installation of a condenser system for the glycol dehydration unit reboiler vent would be minimal. This is because the condensed water collected with the hydrocarbon condensate can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with produced water for disposal by reinjection.

Similarly, the water impacts associated with installation of a vapor control system would be minimal. This is because the water vapor collected along with hydrocarbon vapors in the vapor collection and redirect system can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with the produced water for disposal by reinjection.

There are no adverse solid waste impacts anticipated from the implementation of the proposed standards.

C. Energy Impacts

Energy impacts are those energy requirements associated with the operation of emission control devices. The annual energy requirements for each vapor collection/recovery system installed to comply with the oil and natural gas production proposed standards is estimated to be 300 kilowatt hours per year (kw-hr/yr). It is estimated that approximately 125 oil and natural gas production major source facilities would install one or more of these control options. There would be no national energy demand increase from the operation of any of the control options analyzed under the proposed oil and natural gas production standards for area sources and the national energy demand increase for major sources would be an estimated 38,000 kw-hr/yr.

There would be no national energy demand increase from the operation of any of the control options analyzed under the proposed natural gas transmission and storage standards for major sources.

The proposed standards encourage the use of emission controls that recover hydrocarbon products, such as methane and condensate, that can be used on-site as fuel or reprocessed, within the production process, for sale. Thus, the proposed standards have a positive impact associated with the recovery of non-renewable energy resources.

D. Cost Impacts

The estimated total capital cost to comply with the proposed rule for major sources in the oil and natural gas production source category is approximately $6.5 million. The total capital cost for area sources is estimated to be approximately $6.9 million.

The total estimated net annual cost to industry to comply with the proposed requirements for major sources in the oil and natural gas production source category is approximately $4.0 million. The total net annual cost for area source TEG dehydration units is approximately $6.2 million. These estimated annual costs include (1) the cost of capital, (2) operating and maintenance costs, (3) the cost of monitoring, inspection, recordkeeping, and reporting (MIRR), and (4) any associated product recovery credits.

The estimated total capital cost to comply with the proposed rule for major sources in the natural gas transmission and storage source category is approximately $57,000.

The total estimated net annual cost to industry to comply with the proposed requirements for major sources in the natural gas transmission and storage source category is approximately $46,000. As with the oil and natural gas production total estimated annual cost to industry, this annual cost estimate includes (1) the cost of capital, (2) operating and maintenance costs, (3) the cost of MIRR, and (4) any associated product recovery credits.

The EPA's impact analyses consider a facility's ability to handle collected vapors. Some remotely located facilities may not be able to use collected vapor for fuel or recycle it back into the process. In addition, it may not be technically feasible for some facilities to

utilize the non-condensable vapor streams from condenser systems as an alternative fuel source safely. An option for these facilities is to combust these vapors by flaring.

These concerns are reflected in the analyses conducted by the EPA. In its analyses, the EPA estimated that (1) 45 percent of all impacted facilities will be able to use collected vapors from installed control options as an alternative fuel source for an on-site combustion device such as a process heater or the glycol dehydration unit firebox, (2) 45 percent will be able to recycle collected vapors from installed control options into a low pressure header system for combination with other hydrocarbon streams handled at the facility, and (3) 10 percent will direct all collected vapor to an on-site flare.

E. Economic Impacts

The EPA prepared an economic impact analysis that evaluates the impacts of the regulation on affected producers, consumers, and society. The economic analysis focuses on the regulatory effects on the U.S. natural gas market that is modeled as a national, perfectly competitive market for a homogenous commodity. The analysis does not include a model to assess the regulatory effects on the world crude oil market because the regulation is anticipated to affect less than 5 percent of the total U.S. crude oil production, and thus, it is unlikely to have any influence on the U.S. supply of crude oil or world crude oil prices.

The imposition of regulatory costs on the natural gas market result in negligible changes in natural gas prices, output, employment, foreign trade, and business closures. Price and output changes as a result of the regulation are less than 0.01 of one percent, which is significantly less than observed market trends. For example, between 1992 and 1993 the average change in wellhead price increased by 14 percent, while domestic production rose by 3 percent.

The total annual social cost of the regulation is $10 million for major and areas sources combined. This value accounts for the compliance cost imposed on producers, as well as market adjustments that influence the revenues to producers and consumption by end users, plus the associated deadweight loss to society of the reallocation of resources.

V. Area Source Finding

The EPA performed an analysis to determine the potential threat of adverse effects on human health and the environment due to HAP emissions from TEG dehydration units in the oil and natural gas production source category and the feasibility and impacts of controlling these emissions. The EPA refers to this determination as an ''area source finding.'' The three primary components of an area source finding are (1) a risk assessment conducted for area source TEG dehydration units, (2) an evaluation of the technical feasibility and associated costs of air emission controls, and (3) an assessment of the economic impacts associated with installation of controls.

The EPA conducted a risk assessment for area source TEG dehydration units. The detailed risk assessment is available for review in EPA Air Docket A–94–04 and the item entry number is II–B–20.

The HAP included in the risk assessment were BTEX and n-hexane. These are the primary HAP emitted by TEG dehydration units. Toluene, ethyl benzene, and n-hexane were evaluated for potential non-cancer impacts. The predicted human exposure levels associated with the estimated emission of these HAP from area source TEG dehydration units did not meet or exceed the levels of concern when compared to the available human health reference levels. Mixed xylenes were not quantitatively analyzed since the EPA does not have an appropriate human health benchmark for assessing human xylene exposure by the inhalation pathway.

The predicted exposures associated with the estimated emission of benzene from area source triethylene glycol dehydration units result in a maximum individual risk (MIR) of 3×10^{-4} and an annual cancer incidence ranging from <1 (assuming all facilities are located in rural areas) to 2 (assuming all facilities are located in urban areas). The predicted maximum individual risk from this analysis is above the EPA's historical action level range of 1×10^{-6} to 1×10^{-4}.

The types of controls used on TEG dehydration units are able to achieve a minimum of 95 percent HAP emission reduction. In the parts of the U.S. where the vast majority of natural gas is produced and processed, condensers are typically used to reduce emissions from TEG dehydration units. Flares are also used to reduce emissions from TEG dehydration units.

Unlike flares, which destroy emissions through combustion, condensers capture emissions and allow for the recovery of hydrocarbon liquids (condensate) entrained in the emission stream, thus conserving a valuable non-renewable resource. Properly operated condensers used at TEG dehydration units, that have a flash tank in the overall dehydration system design, have a HAP/volatile organic compound (VOC) control efficiency of 95 percent.

The application of condensers and flares to area source TEG dehydration units have been observed on actual operating units that are typical of those in this industry. Thus, condensers and flares are a technically feasible and demonstrated control option for area source TEG dehydration units.

The economic impact analysis performed to evaluate the impacts of the major and area source provisions of the proposed regulation supports the area source finding. The results of this economic analysis are summarized in section IV of this preamble.

The total annual social cost of the regulation is estimated to be $10 million for major and area sources combined (approximately $4.0 million for major sources and $6.2 million for area sources). This value accounts for the compliance cost imposed on producers, as well as market adjustments that influence the revenues to producers and consumption by end-users, plus the associated deadweight loss to society of the reallocation of resources.

Regulation of area source TEG dehydration units in the oil and natural gas production source category is supported by: (1) The estimated MIR of 3×10^{-4} for HAP emissions from this area source category, (2) technically feasible, effective, and demonstrated control options (condensers and flares) that are readily available for reducing emissions from area source TEG dehydration units, and (3) the results the economic impact analysis that supports the minimal economic impact associated with installation of the identified control options.

The EPA is proposing criteria that would target area source TEG dehydration units for control: (1) Which have benzene emissions, (2) that can be cost-effectively controlled, and (3) where potential human exposures are greatest. These criteria are based on actual natural gas throughput, benzene emission rate, and location in a county classified as urban.

The actual natural gas throughput (on an annual average basis) action levels for area source TEG dehydration units analyzed by the EPA were: (1) 113 thousand m^3/day (4.0 MMSCF/D) or greater, (2) 85 thousand m^3/day (3.0 MMSCF/D) or greater, (3) 42 thousand m^3/day (1.5 MMSCF/D) or greater, and (4) 8.5 thousand m^3/day (0.3 MMSCF/D) or greater. Based on its evaluation of projected impacts and the cost-effectiveness of installed controls, the EPA selected 85 thousand m^3/day (3.0 MMSCF/D) actual natural gas

throughput as an action level for area source TEG dehydration units.

The EPA also selected an action level for area sources based on actual benzene emissions from each area source TEG dehydration unit. Benzene is a known human carcinogen that is typically emitted from glycol dehydration units.

In addition, the EPA selected location as a criterion for control based on the county-level urban versus rural location of area source TEG dehydration units. Only those area source TEG dehydration units located in counties classified as urban (see section III of this preamble) and also meeting or exceeding the actual natural gas throughput and benzene emission rate action levels would be required to install air emission controls for HAP under the proposed rule.

VI. Glycol Dehydration Unit Nationwide HAP Emissions Estimates

Glycol dehydration units are estimated to account for up to 90 percent of HAP emissions from the oil and natural gas industry. The EPA used GRI-GLYCalc™ Version 3.0, an emissions estimation computer program developed by GRI, to estimate HAP emissions from glycol dehydration units. This program is regarded within industry and the EPA as an accurate simulation tool for estimating emissions of organic compounds from glycol dehydration units.

The EPA developed HAP, VOC, and methane emission estimates for a series of representative model glycol dehydration units representative of those that operate within this industry. Nationwide emissions were then estimated by extrapolating from model glycol dehydration unit estimates.

Two inputs to the methodology used by the EPA to estimate nationwide HAP emissions from glycol dehydration units that greatly influence the result are: (1) The average HAP concentration of field natural gas prior to the first processing stage, and (2) the average total number of times that natural gas is dehydrated by all dehydration methods between the wellhead and the end user. Based on extensive discussions with industry, and review of available information and application of engineering judgment, the EPA selected a value of 200 ppmv for the average BTEX concentration of field natural gas and a value of 1.6 for the average number of times that natural gas is dehydrated by all dehydration methods between the wellhead and the end user. Estimated HAP emissions from all glycol dehydration units (at both major and area sources of HAP) are 55,000 Mg/yr.

The EPA acknowledges that there are uncertainties inherent in any estimate of nationwide HAP emissions for industries as large and as diverse as the oil and natural gas production or natural gas transmission and storage source categories. However, the EPA believes that the engineering judgments and methodology used in developing the nationwide HAP emissions estimates for these industries are reasonable given the available information. The EPA requests comment on the methodology and engineering judgments made when developing the nationwide glycol dehydration unit HAP emissions estimates for these source categories. The EPA specifically requests alternative emission estimation methodologies, supported by documentation demonstrating how an alternative methodology would yield improved estimates.

VII. Definition of Major Source for the Oil and Natural Gas Industry

A. Definition of ''Associated Equipment''

Whether a facility is a major source or an area source of HAP emissions under section 112 of the Act is important for two reasons. First, different requirements may be established for major and area sources. Second, a source that is a major source under section 112 of the Act is also subject to requirements for major sources under the Federal operating permit program authorized by title V of the Act. Area sources may also be subject to title V permitting requirements, but the EPA has discretion to defer or waive these requirements.

For some oil and natural gas operations, it is clearly apparent what constitutes a facility (e.g., a natural gas processing plant). For others, however, it may not be clear what constitutes a facility. This is particularly true for field operations in the oil and natural gas production source category.

An oil or natural gas production field, for example, may cover many square miles. Within this area, there can be a large number of production wells, connected by pipeline, to small (satellite) or larger (centralized) locations, such as tank batteries, where storage or intermediate processing occurs prior to transmission to further processing steps. Leasing and mineral rights agreements can give oil and natural gas companies control over a large area of contiguous property.

According to the statutory definition in section 112(a)(1), HAP emissions from all emissions points within a contiguous area and under common control must be counted in a major source determination. A strict interpretation of the statutory definition of major source as applied to this industry could mean that HAP emissions must be aggregated from emission points separated by considerable distances. This distance could be well beyond the distances that separate equipment at a typical facility.

The Congress addressed the unique aspects of the oil and natural gas production industry in special provisions included in section 112(n)(4) of the Act that apply to HAP emissions from oil and natural gas wells and pipeline and compressor facilities. Section 112(n)(4)(A) states

> Notwithstanding the provisions of subsection (a), emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil and gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

The language in section 112(n)(4)(A) makes it clear that, for the purpose of implementing standards for major sources under section 112(d) for this industry, HAP emissions from oil and natural gas exploration and production wells with their associated equipment cannot be aggregated in making major source determinations.

However, the statutory language provides no definition of ''associated equipment.'' Neither is a clear intent evident in the legislative history of the Act's 1990 amendments. The legislative history does indicate that the Congress, in drafting section 112(n)(4), believed that wells and their associated equipment generally: (1) Have low HAP emissions, and (2) are typically located in widely dispersed geographic areas, rather than concentrated in a single area.

A definition of associated equipment is important to implementing standards for this industry for two reasons. First, because the statute prevents the aggregation of HAP emissions from wells and their associated equipment in making major source determinations, the definition of associated equipment can influence which sources are subject to requirements for major sources and which are subject to requirements for area sources. Second, the definition of associated equipment affects the regulation of area sources in the oil and natural gas source category. Section 112(n)(4)(B) states

The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source under subsection (c), except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

Thus, production wells (with their associated equipment) may not be regulated as an area source, but production wells as an individual area source may be regulated by the Administrator under section 112(n)(4)(B) upon an adverse risk determination.

In the absence of clear guidance in the statute, the EPA considered options for defining associated equipment. In extensive discussions with industry and trade association representatives, the EPA evaluated a wide range of options.

One option considered was a definition based on a narrow interpretation of associated equipment that would include only limited equipment in close proximity to a well as associated with that well. Another option considered was a definition based on a broad interpretation of associated equipment that would extend the inclusion of equipment far beyond the well as associated equipment. The initial options considered by the EPA for defining associated equipment and the EPA's assessment of each are discussed below.

The narrowest interpretation option would be that a well and its associated equipment consists of only the well, defined as all equipment below the ground surface, and the pressure maintenance and flow control device attached to the well. For an exploratory well, the typical pressure maintenance and flow control device is the blow out preventer (BOP). For a production well, the typical pressure maintenance and flow control device is referred to as the ''Christmas tree,'' which may include a BOP. This interpretation would provide a technical meaning to the term associated equipment, but would provide limited substantive meaning.

As a practical matter, the term ''well with its associated equipment'' under this option would not provide any additional relief to industry from the aggregation of HAP emissions in a major source determination beyond what would have been provided if Congress had only used the term ''well'' in section 112(n)(4) of the Act. On this basis, the EPA did not select this narrow interpretation for proposal.

An option initially suggested by industry is that all production equipment be considered associated equipment. This is the broadest possible interpretation of the term associated equipment and would extend the definition to the boundaries of the source category, which are (1) to the point of custody transfer for hydrocarbon liquids and (2) to the natural gas transmission and storage source category for natural gas. Under this interpretation, industry maintains that no aggregation of HAP emissions should be allowed, even in situations commonly acknowledged to be a single facility. Only individual emission points which, by themselves, emit 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP would be regulated as major sources under this interpretation.

The EPA rejects this broad interpretation as an option for defining associated equipment for several reasons. First, an interpretation of the language in section 112(n)(4) that would define all equipment as associated with a well, regardless of (1) the type of equipment, (2) any processing or commingling of streams that may occur, or (3) distance from the well, would suggest that the Congress intended that aggregation of HAP emissions not be allowed within this industry under any circumstances. When viewed within the framework of section 112, the EPA does not believe this to be the case.

For example, a natural gas processing plant has numerous HAP emission points closely grouped together. These points may include one or more glycol dehydration units, condensate storage vessels, several gas treatment and separation steps, and various containers. These HAP emission points may emit, in total, HAP in excess of 25 tpy. Each HAP emission point within the natural gas processing plant, however, may emit less than 10 tpy of any one HAP or 25 tpy of any combination of HAP.

If all equipment within the plant were defined as associated equipment, then the plant would not be considered a major source subject to MACT standards. It is, therefore, conceivable that the natural gas processing plant that meets the criteria of a major source could go unregulated by MACT standards under this scenario, even though surrounding populations were exposed to HAP emissions at a level that would trigger the application of MACT standards in other similar industries.

In addition, this option would include (as associated equipment) HAP emission points that the EPA has determined are large individual sources of HAP. In particular, available information indicates that glycol dehydration units and storage vessels emit substantial quantities of HAP.

Glycol dehydration units are the largest identified HAP emission point in the oil and natural gas production source category, accounting for about 90 percent of estimated total HAP emissions from this source category based on available information used in the EPA's analysis. Individually, glycol dehydration units may emit total HAP in amounts from less than 0.9 Mg/yr to substantially above major source levels.

Also, a single storage vessel with flash emissions may emit several megagrams of HAP per year.

The EPA firmly believes that glycol dehydration units and storage vessels with flash emissions are not the type of small HAP emission points that Congress intended to be included in the definition of associated equipment. Further, as previously discussed in section V of this preamble, the EPA has made an area source finding that benzene emissions from TEG dehydration units pose a significant risk to public health.

The EPA does not intend to regulate TEG dehydration units that emit small amounts of HAP. However, the EPA has an obligation to provide public health protection where there is risk from exposure to HAP emissions. If TEG dehydration units were included as associated equipment, the EPA's ability to provide protection to persons at risk from exposure would be severely limited through section 112(n)(4)(B).

For all the reasons set out above, defining all equipment as associated equipment was rejected as an option for proposal by the EPA. However, the EPA believes that the use of custody transfer within an interpretation (along with other criteria) is a good method for delineating between equipment that is associated and not associated with a well.

A variety of interpretations of associated equipment intermediate of those two extremes are also possible. Through discussions with industry and trade association representatives, the EPA considered several intermediate options based on drawing a line of demarcation downstream from the well. Equipment before this line of demarcation would be deemed to be associated with a well and equipment beyond the line would not be considered associated. The point in the processing of oil or natural gas at which such a line of demarcation could be drawn might be tied to where a certain product processing or transfer step takes place.

Three intermediate options, using this approach, define associated equipment as including all equipment up to (1) the point where initial processing of an extracted hydrocarbon stream takes place, (2) the point of physical commingling of the extracted hydrocarbon stream with streams from other wells, and (3) the point of custody transfer, with exceptions for selected affected sources.

The EPA evaluated each of these options with several objectives in mind. First, the option chosen should provide substantive meaning to the term associated equipment and prevent the aggregation of small, scattered HAP emission points in major source determinations. Second, the option chosen should be easily implementable. That is, it should be clear to the regulated community and enforcement personnel what is associated equipment and what is not associated equipment. Finally, the option chosen should not preclude the aggregation of the most significant HAP emission points in the source category. Additionally, the option chosen should not restrict the EPA's ability to regulate glycol dehydration units as area sources.

An option tied to the point of initial processing would meet only the last of these objectives. Initial processing for many extracted hydrocarbon liquid and natural gas streams occurs immediately after the stream has left the well. Typical processing steps that may occur at a well site include gas/oil separation, heating/treating, and dehydration. The only equipment in addition to the Christmas tree that would be included as associated equipment under this option would be storage vessels in which no treating or separation takes place.

Thus, little additional relief from HAP emission aggregation would be provided by an associated equipment definition based on initial processing. Also, the term ''point of initial processing'' is not a term commonly used and understood in the source category, a fact that would likely lead to confusion between enforcement agencies and the regulated community.

Selecting an option based on the point of physical commingling of streams would provide additional substantive meaning to the term associated equipment and possible relief from HAP emission aggregation in situations where a stream from a single well undergoes processing prior to mixing with streams from other wells (the storage vessels and processing equipment would be associated with that well). However, the EPA sees great potential for confusion under this option, as the same equipment that would be considered associated equipment at a single well facility might not be associated equipment where streams from multiple wells are combined prior to processing.

Another option is the use of the point of custody transfer in combination with allowing HAP emission aggregation for selected affected sources. For the proposed production regulation, the EPA defines custody transfer (which has been previously defined in other standards) as transfer, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation. The EPA considers the point at which natural gas enters a natural gas processing plant as a point of custody transfer for the proposed regulation.

From an implementation perspective, this is an attractive option. According to industry and trade association representatives, the term custody transfer is commonly used and understood within the oil and natural gas production source category. Selecting this option would simplify the owner or operator's regulatory compliance determination for a specified piece of equipment. The point of custody transfer often denotes contractually the point of change in ownership of equipment or product. Therefore, defining associated equipment as all equipment up to the point of custody transfer is a good approach for delineating a line of demarcation between equipment that is associated and equipment that is not associated. This approach is the same as the broadest interpretation of associated equipment as initially proposed by industry, however, selected affected sources are not included as associated equipment.

Glycol dehydration units and storage vessels with flash emissions are often located before the point of custody transfer. Many glycol dehydration units, for example, are located on single wells or at condensate tank batteries. As discussed previously, the EPA feels strongly that because glycol dehydration units and storage vessels with flash emissions are significant sources of HAP emissions, they are not the HAP emission points intended by Congress to be associated equipment under section 112(n)(4).

Therefore, the EPA is proposing that associated equipment be defined as all equipment associated with a production well up to the point of custody transfer, except that glycol dehydration units and storage vessels with flash emissions would not be associated equipment. The EPA believes that this proposed definition will provide the relief that Congress intended in section 112(n)(4) while preserving the EPA's ability to require appropriate MACT or GACT controls for the most significant identified HAP emission points in the oil and natural gas production source category. The EPA considers the point at which natural gas enters a natural gas processing plant as a point of custody transfer for natural gas streams and HAP emission aggregation is allowed at natural gas processing plants. Natural gas processing plants are included in the scope of the oil and natural gas production NESHAP.

B. Definition of Facility

As discussed in the previous section, it is not clear for many oil and gas field operations what constitutes a facility and, consequently, exactly where facility boundaries exist for the purpose of a major source determination. With many operations connected by pipeline and located on common oil and gas leases that extend for miles, the meaning of the phrase, ''located within a contiguous area under common control,'' used in section 112(a)(1) of the Act to describe sources that should be grouped in a major source determination, is not often clear when applied to oil and natural gas field operations. Relief from the possible need to aggregate emissions from certain small, widely dispersed, HAP emission sources is provided in the language of section 112(n)(4), and in the EPA's proposed definition of associated equipment. However, potential for confusion still exists concerning when non-associated equipment should be aggregated. Thus, the EPA is proposing further clarification of what constitutes a facility for the purposes of major source determinations in the oil and natural gas production and natural gas transmission and storage source categories.

The EPA's objective in developing a definition of facility for this proposed rulemaking is to identify criteria that would define a grouping of emission points that meet the intent of the section 112(a)(1) language, ''located within a contiguous area and under common control,'' but in terms that are meaningful and easily understood within the regulated industries. Examples of general facility types in the oil and natural gas production source category include natural gas processing plants, offshore production platforms, central tank batteries, satellite tank batteries, and individual well sites. Compressor stations and underground storage facilities are examples of

facilities in the natural gas transmission and storage source category.

Though some facilities in the oil and natural gas production source category, such as natural gas processing plants, fit the profile of a typical industrial facility and are easy to define, other facilities (e.g., production field facilities) do not fit the typical profile. Substantial differences exist between the majority of typical oil and natural production field operations and traditional industrial facilities that are regulated under the Act. Industrial facilities typically have distinct physical boundaries or fencelines. Emission points at these facilities are generally in close proximity to or collocated with one another (contiguous) and located within an area boundary, the entirety of which (other than roads, railroads, etc.) is under the physical control of the same owner (common ownership).

Typical oil and natural gas production field facilities do not adhere to this profile. The owners or operators of production field facilities typically do not own or control the surface property that lies between two or more production field facilities. Rather, the owners or operators of production field facilities control only the surface area that is necessary to operate the physical structures used in oil and natural gas production. Production facilities may be connected by underground flow or gathering lines but are essentially separate independent facilities. Production equipment sharing the same close physical location (e.g., a well site, tank battery, or graded pad) is likely to be under common control and in a contiguous area. However, production equipment that is physically separated within or across leases (to serve different wells and connected by flow or gathering lines) is not contiguous based on surface rights and is not likely to be under common control.

The EPA intends that a facility definition as it applies to the oil and natural gas production source category should lead to an aggregation of emissions in a major source determination that is reasonable, consistent with the intent of the Act, and easily implementable. In this source category, functionally related equipment is generally located at what is referred to as the same surface site. Surface site means the graded pad, gravel pad, foundation, platform, or immediate physical location on which equipment is located. Defining facility based on individual surface site would, in the EPA's view, identify groupings of equipment on which major source determinations would be made that are consistent with the EPA's intent. For example, a definition on this basis would require aggregation of emissions from significant HAP emission sources that are closely grouped, such as two or more glycol dehydration units on the same graded pad treating a natural gas stream. Glycol dehydration units located on different graded pads, for example at separate tank batteries, would presumably not be functionally related (i.e., the units treat different streams) and in most cases would be separated by considerable distance. Consequently, the EPA does not believe it would be reasonable to combine emissions from these units. Finally, because the term surface site is well understood within industry and easily recognizable by enforcement authorities, a facility definition on this basis should be easily implementable. For these reasons, the EPA is proposing a facility definition based on individual surface site. For further clarification, the EPA is also proposing that equipment located on different oil and gas properties (oil and gas lease, mineral fee tract, subsurface unit area, surface fee tract, or surface lease track) shall not be aggregated.

Another objective of the EPA in developing a definition of facility was to minimize, where possible and reasonable, the burden on owners and operators in making a major source determination. The EPA's evaluation of HAP emission sources in production field operations indicates that the two primary HAP emission points at field operation facilities are glycol dehydration units and storage tanks with flash emissions, and that other potential HAP emission points at these facilities (e.g., equipment leaks) will be inconsequential to the determination of a facility's major source status. Therefore, the EPA is proposing that for the purpose of a major source determination, a production field facility would be limited to glycol dehydration units and storage tanks with flash emission potential. The EPA believes that by eliminating the need to quantify HAP emissions from small sources at such facilities, the burden on an owner or operator to make a major source determination would be greatly reduced, while still ensuring an accurate classification of the facility as a major or area source of HAP emissions.

The EPA specifically requests comments on the proposed definition of facility. Specifically the EPA requests comments on whether the proposed definition appropriately implements the intent of the major source definition in section 112(a)(1) for the oil and natural gas production and natural gas transmission and storage source categories, or if another definition would better implement this intent.

VIII. Rationale for Proposed Standards

A. Selection of Hazardous Air Pollutants for Control

The EPA believes that it is not appropriate to select all organic HAP listed under section 112(b) of the Act for regulation under the proposed NESHAP. Of the 188 compounds listed, only a limited number are emitted from oil and natural gas facilities. Consequently, the EPA developed a list of the specific HAP to be regulated in the proposed rules. However, all 188 listed HAP must be considered in any major source determination under the General Provisions to 40 CFR Part 63.

To select which HAP are to be regulated under the proposed NESHAP, the EPA evaluated the potential for HAP to be emitted from oil and natural gas facilities. Based on this evaluation, the EPA is proposing that the following specific HAP be regulated under the proposed NESHAP: acetaldehyde, benzene (including benzene in gasoline), carbon disulfide, carbonyl sulfide, ethyl benzene, ethylene glycol, formaldehyde, n-hexane, naphthalene, toluene, 2,2,4-trimethylpentane (iso-octane), and mixed xylenes, including o-xylene, m-xylene, and p-xylene.

The EPA decided to develop a set of control options for this industry to control HAP emissions as a class rather than developing a series of control options to control emissions of each individual HAP on the list. Consequently, the control options considered are directed towards the control of total HAP emissions.

B. Selection of Emission Points

The EPA identified the primary types of HAP emission points at oil and natural gas facilities. The three primary HAP emission point types are (1) process vents, (2) storage vessels, and (3) equipment leaks.

The primary process vent HAP emission point is the glycol dehydration unit reboiler vent. A glycol dehydration unit reboiler regenerates glycol used in the dehydration of natural gas by separating the water from the glycol. The glycol also attracts aromatic compounds, including BTEX and n-hexane during the dehydration process. These HAP, along with the water vapor and other gases, are emitted through the glycol dehydration unit reboiler vent.

In addition, glycol dehydration units may incorporate the use of a gas condensate glycol separator (GCG separator or flash tank). The rich glycol,

which has absorbed water vapor from the natural gas stream, leaves the bottom of the absorption column of a glycol dehydration unit and is directed either to (1) GCG separator (flash tank) and then a reboiler or (2) directly to a reboiler where the water is boiled off the rich glycol. If the system includes a GCG separator (flash tank), the gas separated from the rich glycol is typically (1) recycled to the header system, (2) used for fuel, or (3) used as a stripping gas. The GCG separator (flash tank) vent is a potential HAP emission point if vented to the atmosphere.

Other potential HAP emission point process vents are the tail gas streams from amine treating processes and sulfur recovery units. Limited data have been identified that indicate the potential for HAP emissions from these operations. Thus, HAP emissions from amine treating processes and sulfur recovery units have not been estimated. Recent research published by GRI indicates that these emission points have the potential to be significant sources of HAP emissions. Comment is requested on potential HAP emissions and emission rates from these operations and potential applicable air emission controls.

Storage vessels have also been identified as a HAP emission point. Storage vessels used in the oil and natural gas industry include storage vessels with flash emissions. Storage vessels in the oil and natural gas production source category are commonly equipped with fixed roofs. Emissions from fixed-roof storage vessels with flash emissions are a result of breathing, working, and (primarily) flash losses.

Pipeline pigging and storage of pipeline pigging wastes is a potential HAP emission point in the transmission sector of the oil and natural gas industry. Only limited qualitative data have been identified that indicate the potential for HAP emissions from this operation. Thus, HAP emissions have not been estimated. Comment is requested on potential HAP emissions from storage of pipeline pigging wastes and potential applicable emission controls.

Valves, pump seals, and other pieces of equipment servicing HAP-containing streams have the potential to leak. A majority of facilities in the oil and natural gas industry do not have LDAR programs. Therefore, equipment leaks from that equipment servicing HAP-containing streams have been identified as a potential HAP emission point.

In addition to the above HAP emission points, the EPA evaluated the potential regulation of other HAP emission points. These included (1) containers, (2) equipment leaks at tank batteries and offshore production platforms, (3) production surface impoundments, and (4) waste and wastewater management units.

Insufficient data were submitted in the Air Emissions Survey Questionnaire responses for the other potential HAP emission points of containers, equipment leaks at tank batteries and offshore production platforms, production surface impoundments, and waste and wastewater management units to allow for determination of existing control levels. Thus, a review of other data sources was conducted to identify information on existing control levels for these potential HAP emission points.

For these other HAP emission points, the review of available information did not indicate any apparent pattern of existing emission controls. Thus, it has been determined that the existing level of control for this collection of other HAP emission points is no control.

C. Definition of Affected Source

The term affected source is used in part 63 regulations to designate the emission sources or group of sources that are regulated by a standard. Each standard must define what the affected source is for purposes of that specific standard.

The EPA has discretion to establish a narrow or broad definition of affected source, as appropriate for a particular rule. A broad definition would be in terms of groups of equipment. A narrow definition would designate specific pieces of equipment or emission points as separate affected sources.

For the proposed oil and natural gas production and natural gas transmission and storage NESHAPs, a narrow definition of affected source is proposed for most HAP emission points. The affected sources under the oil and natural gas production NESHAP include (1) each glycol dehydration unit located at a major source of HAP, (2) each TEG dehydration unit located at an area source of HAP, and (3) each storage vessel with flash emissions located at a major source of HAP.

For the proposed standards for equipment leaks at natural gas processing plants, the EPA is proposing a broad definition of affected source. Specifically, the group of equipment targeted by fugitive emission standards (pumps, pressure relief devices, valves, flanges, etc. that operate in organic HAP service) are designated as one affected source, except that compressors would each be a separate affected source. The implication of this broader definition is that the replacement of an individual component, such as a valve, would not be considered the construction of a new affected source, which triggers reporting requirements for new sources.

The affected source under the natural gas transmission and storage NESHAP is each glycol dehydration unit located at a major source of HAP.

D. Determination of MACT Floor

As described in this preamble, the Act defines a minimum level of control for standards established under section 112(d), referred to as the MACT floor. For a source category with 30 or more sources, such as with the oil and natural gas production and natural gas transmission and storage source categories, the MACT floor for existing sources shall not be less stringent than the average emission limitation achieved in practice by the best performing 12 percent of existing sources. Standards more stringent than the floor may be established based on a consideration of cost, environmental, energy, and other impacts.

The EPA is to establish standards based on available information. Available information for the MACT floor analysis for these source categories consists primarily of data gathered from industry responses to survey questionnaires. The surveys were designed to collect information representative of processes and operations in these source categories.

1. MACT Floor for Existing Sources

Oil and Natural Gas Production-Glycol Dehydration Unit Vents; Natural Gas Transmission and Storage-Glycol Dehydration Unit Vents. The MACT floor for all process vents at glycol dehydration units (including area source TEG dehydration units in the oil and natural gas production source category) is 95 percent HAP emission reduction, which correlates with the existing control level estimated to be achieved through the use of condensers.

Oil and Natural Gas Production-Storage Vessels. The MACT floor for existing storage vessels containing material with a GOR equal to or greater than 50 m^3 (1,750 ft^3) per barrel or an API gravity equal to or greater than 40° and an actual throughput equal to or greater than 500 BPD (i.e., storage vessel with flash emissions) is the installation and operation of a cover that is connected through a closed-vent system to a 95 percent efficient control device. A pressurized storage vessel that is designed to operate as a closed system is considered in compliance with the requirements for storage vessels.

Oil and Natural Gas Production-Equipment Leaks. The MACT floor levels for equipment leaks apply only to those components at natural gas processing plants handling material with a total HAP content equal to or greater than 10 percent by weight.

The MACT floor for equipment leaks at natural gas processing plants is judged to be at the new source performance standard (NSPS) level of control for natural gas processing plants. The NSPS level of control is equal to that of 40 CFR part 61, subpart V (equipment leaks NESHAP). Since the pollutants targeted for control under the proposed standards are HAP, the proposed standards cross-reference the requirements from the equipment leaks NESHAP.

The proposed standards require monthly monitoring of equipment with a leak definition of 10,000 ppmv VOC. Based on the component counts and other characteristics of the model natural gas processing plants, it is estimated that the NESHAP LDAR program would attain a 70 percent HAP emission reduction from uncontrolled cases. The proposed standards allow existing natural gas processing plants subject to the NSPS to comply only with those requirements.

2. MACT Floor for New Sources

In the review of available information, the EPA did not identify a method of control applicable to all types of new sources that would achieve a greater level of HAP emission reduction than the MACT floor for existing sources. Therefore, the MACT floor for new sources in the oil and natural gas production and natural gas transmission and storage source categories is the same as the MACT floor for existing sources.

E. Oil and Natural Gas Production NESHAP-Regulatory Alternatives for Existing and New Major Sources

The EPA evaluated two regulatory alternatives for existing and new major sources in the oil and natural gas production source category. The first regulatory alternative is the MACT floor levels for the identified HAP emission points. A second regulatory alternative was evaluated that included the installation of combustion control systems for process vents and storage tanks at all impacted major sources. Combustion systems typically have a control efficiency of 98 percent, or greater, as compared with the control systems in Regulatory Alternative 1, which achieve an emission reduction efficiency of 95 percent.

Regulatory Alternative 1 (MACT floor) would achieve a nationwide decrease in HAP emissions from all HAP emission points at major sources of approximately 77 percent. In the EPA's judgement, the costs (and the associated cost-effectiveness) of going beyond the floor would be greatly disproportional to the additional HAP emission reduction that would be achieved. The costs and average and incremental cost-effectiveness of the two regulatory alternatives are presented in Table 4. Based on this and other information, the EPA selected Regulatory Alternative 1 (MACT floor) as the basis for the proposed standards. In addition, the EPA did not select Regulatory Alternative 2 since the control options evaluated (combustion systems) involved the destruction of a recoverable non-renewable resource and did not encourage the application of pollution prevention techniques.

TABLE 4.—COMPARISON OF REGULATORY ALTERNATIVE COST IMPACTS FOR THE PROPOSED OIL AND NATURAL GAS PRODUCTION STANDARDS—MAJOR SOURCE PROVISIONS

Cost category	Regulatory alternative	
	1 (MACT floor)	2
Implementation costs (Million of July 1993 $):		
Total installed capital	6.5	18
Total annual	4.0	23
Cost-effectiveness ($/Megagram HAP):		
Average	130	740
Incremental	.....	19,000

These standards would impact those glycol dehydration units, at major sources, with an actual natural gas throughput equal to or greater than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, unless it is demonstrated that benzene emissions from the unit were less than 0.9 Mg/yr (1 tpy).

F. Oil and Natural Gas Production NESHAP-Regulatory Alternatives for Existing and New Area Sources

The EPA evaluated four regulatory alternatives for TEG dehydration units at existing and new area sources at oil and natural gas production sources. Each regulatory alternative is characterized in terms of an action level, above which HAP emissions must be controlled. The action levels considered are expressed as the actual annual average flow rate of natural gas (in thousand m^3/day (MMSCF/D)) to the TEG dehydration unit. The action levels for the regulatory alternatives are (1) 113 thousand m^3/day (4.0 MMSCF/D) or greater, (2) 85 thousand m^3/day (3.0 MMSCF/D) or greater, (3) 42 thousand m^3/day (1.5 MMSCF/D) or greater, and (4) 8.5 thousand m^3/day (0.3 MMSCF/D) or greater.

Based on an evaluation of the projected action level impacts and costs-effectiveness, the EPA selected Regulatory Alternative 2 as representative of GACT for TEG dehydration units at area sources of HAP. Alternative 2 would impact those TEG dehydration units with an actual natural gas throughput equal to or greater than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, unless it is demonstrated that benzene emissions from the unit were less than 0.9 Mg/yr (1 tpy).

It is the objective of the EPA to structure the rules for area sources in a way that protects exposed populations. The EPA also needs to minimize the cost to industry to control units where there would be less human exposure and overall cancer incidence from exposure to HAP emissions from area source TEG dehydration units.

Therefore, the EPA is proposing a criterion that no unit would have to be controlled if it is demonstrated that emissions of benzene from the unit are less than 0.9 Mg/yr (1 tpy), either uncontrolled or with controls in place under federally enforceable limits. As noted previously, benzene is a known human carcinogen that is typically emitted from TEG dehydration units.

The EPA is also proposing the use of a population-based action level in conjunction with the actual natural gas throughput and benzene emission rate action levels for area source TEG dehydration units. The EPA selected an action level based on the county-level urban versus rural location of area source TEG dehydration units. Only those selected area source TEG dehydration units located in counties classified as urban (see section III of this preamble) and also meeting or exceeding the actual natural gas throughput and benzene emission rate action levels will be required to install air emission controls on all process vents.

G. Natural Gas and Transmission NESHAP-Regulatory Alternatives for Existing and New Major Sources

The EPA evaluated two regulatory alternatives for existing and new major sources in the natural gas transmission and storage source category. The first regulatory alternative is the MACT floor level for all process vents at glycol dehydration units. A second regulatory alternative was evaluated that included the installation of combustion control systems for process vents at all impacted major sources. Combustion systems typically have a control efficiency of 98 percent, or greater, as compared with the control systems in Regulatory Alternative 1 which achieve an emission reduction efficiency of 95 percent.

Regulatory Alternative 1 (MACT floor) would achieve a nationwide decrease in HAP emissions from major sources of approximately 95 percent. The costs and the associated cost-effectiveness of going beyond the floor would be greatly disproportional to the additional HAP emission reduction that would be achieved. The costs and average and incremental cost-effectiveness of the two regulatory alternatives are presented in Table 5. Based on this and other information, the EPA selected Regulatory Alternative 1 (MACT floor) as the basis for the proposed standards. In addition, the EPA did not select Regulatory Alternative 2 since the control options evaluated (combustion systems) involved the destruction of a recoverable non-renewable resource and did not encourage the application of pollution prevention techniques.

TABLE 5.—COMPARISON OF REGULATORY ALTERNATIVE COST IMPACTS FOR THE PROPOSED NATURAL GAS TRANSMISSION AND STORAGE STANDARDS

Cost category	Regulatory alternative	
	1 (MACT floor)	2
Implementation costs (Thousand of July 1993 $):		
Total installed capital	57	230
Total annual	46	250
Cost-effectiveness ($/Megagram HAP):		
Average	420	2,100
Incremental	.....	20,000

H. Selection of Format

Section 112(d) of the Act requires that emission standards for control of HAP be prescribed unless, in the judgement of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards. These conditions include (1) if the HAP cannot be emitted through a conveyance device or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then the Administrator may instead promulgate equipment, work practice, design or operational standards, or a combination thereof.

Formats for emission standards include (1) percent reduction, (2) concentration limits, or (3) a mass emission limit. For the proposed NESHAPs, standards solely expressed as a percent, concentration, or mass emission reduction would not alone appropriately reflect the technologies on which the proposed standards are based and ensure that the intended emissions reductions are achieved. Therefore, the proposed standards are a combination of (1) emission standards and (2) equipment, design, work practice, and operational standards.

The format chosen for glycol dehydration unit (including area source TEG dehydration units subject to the proposed oil and natural gas production NESHAP) process vent streams is a HAP weight-percent reduction requirement that applies to the control device. A weight-percent reduction format is appropriate for streams with HAP concentrations above 1,000 ppmv because such a format ensures the 95 percent control level requirement. The format for the proposed storage vessel provisions is a combination of a weight-percent reduction and inspection, repair, and work practice requirements. The inspection, repair, and work practice requirements are necessary to ensure the proper operation and integrity of control equipment.

For equipment leak sources, such as pumps and valves, the EPA has previously determined that it is not feasible to prescribe or enforce emission standards. Except for those items of equipment for which standards can be set at a specific concentration. The only method of measuring emissions is total enclosure of individual items of equipment, collection of emissions for a specified time period, and measurement of the emissions. This procedure, known as bagging, is a time-consuming and prohibitively expensive technique considering the great number of individual items of equipment in a typical process unit.

The proposed standards for equipment leaks at natural gas processing plants incorporate several formats, including equipment, design, base performance levels, work practices, and operational practices. The proposed formats are the same as for the natural gas processing plant (on-shore) NSPS and the 40 CFR part 61, subpart V equipment leaks (fugitive emissions) NESHAP.

I. Selection of Test Methods and Procedures

Test methods and procedures specified in the proposed standards

would be used to demonstrate compliance. Procedures and methods included in the proposed standards are, where appropriate, based on procedures and methods previously developed by the EPA for use in implementing standards for sources similar to those being proposed for regulation. Methods and procedures are included to determine the following (1) no detectable emissions, (2) volatile organic HAP (VOHAP) concentration, (3) control device performance (i.e., control-efficiency), and (4) annual average flow rate of field natural gas to a glycol dehydration unit.

J. Selection of Monitoring and Inspection Requirements

Control devices used to comply with the proposed standards need to be properly operated and maintained if the standards are to be achieved on a long-term basis. The EPA considered two monitoring options for these NESHAPs (1) the use of CMS and (2) the use of monitors that measure operating parameters that can be directly related to the emission control performance of a particular control device.

The CMS that use gas chromatography to measure individual gaseous organic HAP compound chemicals are not practical for applications where multiple organic HAP chemicals are to be monitored, as is typical with oil and natural gas production and natural gas transmission and storage facilities.

An alternative is to use a CMS to measure total VOC or total hydrocarbons (THC) as a surrogate for total organic HAP. These CMS, however, provide a measure of the relative concentration level of a mixture of organic chemicals, rather than a quantified level of the organic species present.

Based on these reasons, the EPA rejected requiring the use of CMS for the proposed NESHAPs. Instead, the EPA selected monitoring of control device operating parameters indicative of air emission control performance as the appropriate approach to monitoring.

The proposed NESHAPs specify the types of parameters that can be monitored for common types of control devices. These parameters were selected because they are good indicators of control device performance and because continuous parameter monitoring instrumentation is available at a reasonable cost. An owner or operator could be approved, on a case-by-case basis, to monitor parameters not specifically listed in the proposed standards.

The established operating parameters for each control device will be incorporated in the operating permit issued for a facility (or, in the absence of an operating permit, the established levels will be directly enforceable) and will be used to determine a facility's compliance status. Excursions outside the established operating parameter values will be considered violations of the applicable emission standards, except when the excursion is caused by a startup, shutdown, or malfunction that meets the criteria specified in the part 63 General Provisions (40 CFR part 63 subpart A).

Continuous monitoring is not feasible for those emission points required to comply with certain equipment standards and work practice standards (e.g., storage vessels equipped with only covers, pumps and valves subject to LDAR programs). In such cases, failure to install and maintain the required equipment or properly implement the LDAR program constitutes a violation of the applicable equipment or work practice standards.

The owner or operator of a glycol dehydration unit that does not install controls would be required to install a flow monitor to demonstrate that the actual natural gas flow rate to the unit is less than the action level of 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis. If a flow monitor is installed, it must have an accuracy of within 2 percent.

K. Selection of Recordkeeping and Reporting Requirements

The EPA may require an owner or operator of a source to establish and maintain records and prepare and submit notifications and reports. General recordkeeping and reporting requirements for all NESHAP are specified in the part 63 General Provisions (40 CFR 63.9 and 40 CFR 63.10).

The proposed standards would require sources to submit (1) initial notification reports, (2) notification of compliance status reports, and (3) other periodic reports (e.g., startup, shutdown and malfunction report, excess emissions report, CMS performance test report).

All recordkeeping and reporting requirements proposed for major sources are consistent with the General Provision requirements, except that (1) the initial notification would not be due for a year and (2) the startup, shutdown and malfunction report, excess emissions report, and CMS performance test report would be required semi-annually rather than quarterly unless otherwise specified by the State regulatory authority.

The EPA is proposing fewer recordkeeping and reporting requirements for oil and natural gas production area sources. Specifically, the owners and operators of applicable area sources are not subject to (1) the requirements in § 63.6, paragraph (e) of the General Provisions for developing and maintaining a startup, shutdown, and malfunction plan or (2) the requirements in § 63.10, paragraph (d) for reporting actions consistent with the plan. The owners and operators of applicable area sources are required to submit a report identifying occurrences of startup, shutdown, or malfunction when these events happen or are anticipated to happen.

Further, the periodic excess emissions reports and summary reports, as described in § 63.10 paragraph (e)(3) of the General Provisions, are required on a less frequent basis than for major sources. For area sources, these reports are required annually (i.e., major sources need to submit these reports semi-annually). This was done to reduce the recordkeeping and reporting burden on owners and operators of affected facilities.

IX. Relationship to Other Standards and Programs under the Act

A. Relationship to the Part 70 and Part 71 Permit Programs

Under title V of the Act, the EPA established a permitting program (part 70 and part 71 permitting program) that requires all owners and operators of HAP-emitting sources to obtain an operating permit (57 FR 32251, July 21, 1992). Sources subject to the permitting program (i.e., oil and natural gas production and natural gas transmission and storage sources) are required to submit complete permit applications within a year after a State program is approved by the EPA or, where a State program is not approved, within a year after a program is promulgated by the EPA. If the State where the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application to the EPA Regional Office in accordance with the requirements of the part 63 General Provisions (40 CFR 63 subpart A).

In addition, section 502(a) of the Act expressly gives the Administrator the discretion to exempt one or more area source categories (in whole or in part) from the requirement to obtain a permit under 42 U.S.C. 7661a(a).

* * * if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.

One critical factor that the EPA considers as part of the ''unnecessarily burdensome'' criteria is the degree to which the standard is implementable outside of a permit, such that the permit would provide minimal additional benefit with regard to source-specific tailoring of the standards.

All area source TEG dehydration units impacted by the provisions of the proposed standards must (1) comply with the compliance schedule within the rule, (2) perform monitoring of the required parameters for ensuring compliance, and (3) follow the limited recordkeeping and reporting requirements. Therefore, the primary goal of significant reductions in HAP emissions, particularly BTEX and n-hexane, would be achieved, regardless of whether a permit is required. Unless otherwise required by the State, the owner or operator of an area source subject to the proposed standards is not required to obtain a permit under part 70 of title 40 CFR.

B. Relationship Between the Oil and Natural Gas Production and the Organic Liquids Distribution (Non-Gasoline) Source Categories

The EPA believes that a clear applicability demarcation is necessary to distinguish those sources that would be subject to the proposed oil and natural gas production NESHAP and those that would be subject to the organic liquids distribution (non-gasoline) NESHAP, which is scheduled for promulgation by the year 2000.

The proposed standards for the oil and natural gas production source category identify the source category and applicability as including facilities up to the point of custody transfer. The EPA intends to define the organic liquids distribution (non-gasoline) source category as including those facilities that handle and distribute organic liquids (non-gasoline) from the point of custody transfer.

C. Relationship of Proposed Standards to the Pollution Prevention Act

The Congress passed and the President signed into law the Pollution Prevention Act of 1990 (PPA) making pollution prevention a national policy. Section 6602(b) identifies an environmental management hierarchy in which pollution

> * * * should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner, whenever feasible; and disposal or other releases into the environment should be employed only as a last resort * * *

In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

According to PPA section 6603, source reduction is defined as reducing the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. Source reduction does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that is not integral to or necessary for producing a product or providing a service.

Pertaining to these proposals, section 6604(b)(2) of the PPA directs the EPA to, among other things,

> * * * review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction.

The EPA believes that these proposed standards are consistent with the purpose of the Clean Air Act's requirement to consider source reduction technologies. The EPA's emphasis on source reduction hierarchy is also entirely consistent with the Act, particularly the air toxics provision (section 112) that requires the maximum achievable emission reductions through measures that

> * * * reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications; * * *

In the proposed standards, the EPA has incorporated the application of the environmental source reduction management hierarchy. These proposed standards encourage source reduction by (1) control of HAP air emissions through the use of condensers and vapor collection/recovery systems and (2) allowing for the use of system optimization on glycol dehydration units through the adjustment of the glycol circulation rate. This adjustment may significantly reduce related HAP emissions because, on average, the glycol circulation rate is double the necessary rate.

D. Relationship of Proposed Standards to the Natural Gas STAR Program

The Natural Gas STAR Program is a voluntary, cooperative program between the EPA and the natural gas industry to promote cost-effective methods for reducing methane emissions. The program, part of the U.S. Climate Change Action Plan, outlines a set of initiatives that will enable the profitable reduction of greenhouse gas emissions. The first phase of the program was initiated in 1993 with companies in the natural gas transmission and distribution industry. The 38 partner companies are currently capturing 36.8 million m^3 (1.3 billion ft^3 (bcf)) of methane annually, worth almost $3 million.

The natural gas production industry program was initiated in 1995. When fully implemented in the year 2000, Natural Gas STAR companies are projected to recover more than 710 million m^3 (25 bcf) of methane annually, worth an estimated $50 million.

Under this program, partners agree to implement two best management practices (BMPs) when cost-effective. These include (1) identifying and replacing high-bleed pneumatic devices and (2) installing GCG separators (flash tank separators) on glycol dehydration units and recovering the separated methane stream. Additionally, the EPA has agreed to assist partner companies in the removal of unjustified regulatory barriers to implementing these practices.

The standards proposed for the oil and natural gas production and natural gas transmission and storage source categories do not create regulatory barriers to implementing the BMPs encouraged under this program. The control requirements for glycol dehydration units at major sources and selected area sources would require control of the flash tank separator vent, if present. This would encourage further product recovery and reduction of HAP and methane air emissions and enhance the product recovery and emission reduction goals of the Natural Gas STAR Program.

E. Overlapping Regulations

The proposed standards clarify the applicability of 40 CFR part 63, subpart HH (oil and natural gas production NESHAP) equipment leak provisions by stating that existing oil and natural gas production sources subject to subpart HH and 40 CFR part 60, subpart KKK (onshore natural gas processing plants NSPS) are required only to comply with subpart KKK.

X. Solicitation of Comments

Comments are specifically requested on several aspects of the proposed standards. These topics are summarized below.

A. Potential-to-Emit

The EPA is currently in the process of developing a separate rulemaking to address several potential-to-emit (PTE) issues. Until the EPA takes final action on the proposal, any determination of PTE made to determine a facility's applicability status under a relevant part 63 standard should be made according to requirements set forth in the relevant standard and in the General Provisions.

Industry representatives have commented that both oil and natural gas production and natural gas transmission and storage facilities often have a maximum capacity (based on physical and operational design) to emit higher than inherent physical limitations would allow. Concern was expressed that potential emissions could be overestimated and a facility could be subject to the Act requirements affecting major sources despite inherent limitations (e.g., depletion of oil and natural gas reservoirs).

The EPA is committed to providing technical assistance on the type of inherent physical and operational design features that may be considered acceptable in determining the PTE for certain source categories. Therefore, the EPA is evaluating and solicits specific recommendations, along with supporting documentation, on how inherent limitations should be addressed for oil and natural gas production and natural gas transmission and storage facilities.

B. Definition of Facility

The EPA specifically requests comments on the proposed definition of facility. Specifically, the EPA requests comments on whether the proposed definition appropriately implements the intent of the major source definition in section 112(a)(1) for the oil and natural gas production and natural gas transmission and storage source categories, or if another definition would better implement this intent.

C. Interpretation of ''Associated Equipment'' in Section 112(n)(4) of the Act

As discussed in section V of this preamble, the EPA has proposed a definition for the term ''associated equipment'' to implement the special provisions of section 112(n)(4) of the Act for the oil and natural gas production source category. Comments are specifically requested on the EPA's proposed definition.

If there is disagreement with the EPA's proposed definition, the EPA requests that the commenter provide alternative definition options, along with supporting documentation, that would provide the relief intended by Congress for this industry while preserving the EPA's ability to regulate HAP emissions from glycol dehydration units, storage vessels with flash emissions, and equipment leaks.

D. Regulation of Area Source Glycol Dehydration Units

The EPA does not intend to regulate TEG dehydration units that have low HAP emissions or units in areas where there is little or no potential threat of adverse health effects from exposure to HAP emissions from TEG dehydration units. The rules, as proposed, include applicability cutoffs of (1) 85 thousand m^3/day (3.0 MMSCF/D) of flow to the unit, on an annual average basis, or (2) 0.9 Mg/yr (1 tpy) of benzene emissions.

The EPA is proposing an additional action level based on the county-level urban versus rural location of area source TEG dehydration units. Thus, only those selected area source TEG dehydration units located in counties classified as urban (see section III of this preamble) and also meeting or exceeding the actual natural gas throughput and benzene emission rate action levels will be required to install air emission controls on all process vents. Units (1) below these cutoffs or (2) located in counties classified as rural would not have to be controlled for HAP emissions under the proposed rules.

The EPA evaluated the use of a risk-distance applicability criteria as an alternative to the urban area criteria. The EPA is requesting comment, along with supporting documentation, on the use of a risk-distance applicability criteria for focussing the area source provisions of this proposed regulation to only those area source TEG dehydration units that meet a risk-distance criteria for applicability.

TEG dehydration units located at natural gas transmission and storage facilities emit similar emissions and have a similar emission potential to those located at oil and natural gas production facilities. However, insufficient information was available to conduct an area source finding analysis for the natural gas transmission and storage source category.

The EPA is currently evaluating whether TEG dehydration units located at natural gas transmission and storage area sources result in an unacceptable risk and should be listed and regulated as an area source. The EPA is soliciting comment, along with supporting documentation, in this notice on the emissions, location, and number of TEG dehydration units located at natural gas transmission and storage area sources. Information supplied to the EPA should either support or negate the need for an area source listing.

E. HAP Emission Points

The EPA specifically requests information on potential HAP emissions that may be associated with (1) process vents at amine treating units and sulfur plants, (2) transfer and storage of pipeline pigging wastes, and (3) combustion sources located at oil and natural gas production and natural gas transmission and storage facilities. The EPA has not identified sufficient data to adequately address the potential of HAP emissions from these emission points in these source categories. Thus, the EPA is requesting comment, along with supporting documentation, on HAP emissions from these emission points.

F. Storage Vessels at Natural Gas Transmission and Storage Facilities

The EPA had insufficient information to determine whether significant HAP-emitting storage vessels warranting control are located at natural gas transmission and storage facilities that are major sources of HAP. Therefore, the EPA is soliciting information and comment, along with supporting documentation, regarding the storage vessels located at these sources.

Specifically, the EPA is requesting information and comment, along with supporting documentation, on whether the storage vessels currently being proposed for control under the oil and natural gas production NESHAP are similar to those located at natural gas transmission and storage facilities.

G. Cost Impact and Production Recovery Credits

The EPA specifically requests comments on the cost impact and the production recovery credits as discussed in section IV of the preamble. In addition to its solicitation for comments, the EPA also requests documentation to support cost impact or recovery credit comments.

XI. Administrative Requirements

A. Docket

The docket for these rulemakings is A–94–04. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The principal purposes of the docket are (1) to allow interested parties a means to

identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A) of the Act]. This docket contains copies of the regulatory text, BID, BID references, and technical memoranda documenting the information considered by the EPA in the development of the proposed rules. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Paperwork Reduction Act

The information collection requirements in these proposed rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents have been prepared by the EPA (ICR Nos. 1788.01 and 1789.01) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W.; Washington, DC 20460 or by calling (202) 260–2740.

Information is required to ensure compliance with the provisions of the proposed rules. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the proposed rules. In addition, the EPA's authority to take administrative action would be reduced significantly.

The proposed rules would require that facility owners or operators retain records for a period of five years, which exceeds the three year retention period contained in the guidelines in 5 CFR 1320.6. The five year retention period is consistent with the provisions of the General Provisions of 40 CFR Part 63, and with the five year records retention requirement in the operating permit program under Title V of the CAA.

All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Chapter 1, Part 2, Subpart B, Confidentiality of Business Information. See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979. Even where the EPA has determined that data received in response to an ICR is eligible for confidential treatment under 40 CFR Part 2, Subpart B, the EPA may nonetheless disclose the information if it is ''relevant in any proceeding'' under the statute [42 U.S.C. 7414(C); 40 CFR 2.301(g)]. The information collection complies with the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular 108.

Information to be reported consists of emission data and other information that are not of a sensitive nature. No sensitive personal or proprietary data are being collected.

The estimated annual average hour burden for the major source provisions of the proposed oil and natural gas production NESHAP is 169 hours per respondent. The estimated annual average cost of this burden is $7,300 for each of the estimated 484 existing and new (projected) respondents.

The estimated annual average hour burden for the area source provisions of the proposed oil and natural gas production NESHAP is 56 hours per respondent. The estimated annual average cost of this burden is $2,400 for each of the estimated 572 existing and new (projected) respondents.

The estimated annual average hour burden for the major source provisions of the proposed natural gas transmission and storage NESHAP is 77 hours per respondent. The estimated annual average cost of this burden is $3,300 for each of the estimated 5 existing respondents.

Reports are required on a semi-annual and annual basis (depending upon the reports) and as required, as in the case of startup, shutdown, and malfunction plans. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICRs to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number(s) in any correspondence. Since OMB is required to make a decision concerning the ICR's between 30 and 60 days after February 6, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by March 9, 1998. The final rules will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Executive Order 12866

Under Executive Order 12866 [58 FR 5173 (October 4, 1993)], the EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows: (1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) is likely to materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof; or (4) is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Based on criteria 1, 2, and 3, this action is not a ''significant regulatory action'' within the meaning of Executive Order 12866. However, the OMB has deemed it significant under criterion 4 and has requested review of this proposed rulemaking package. Therefore, the EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These proposed rules will not have a significant economic impact on a substantial number of small entities. According to Wards Business Directory (1993), there are 1,152 firms in the seven affected Standard Industrial Classification (SIC) codes and 735 of these firms meet the Small Business Administration (SBA) definition of a small entity.

The number of affected small entities for these rules is likely to be minimal due to several considerations in these rules that minimize the burden on all firms, both small and large. These considerations include exempting from control requirements those glycol dehydration units located at major or area sources with (1) an actual flowrate of natural gas to the glycol dehydration unit less than 85 m^3/day (3.0 MMSCF/D), on an annual average basis, or (2) benzene emissions less than 0.9 Mg/yr (1 tpy). In addition, emission controls are limited to those area source glycol dehydration units located in urban areas.

In a screening of potential impacts on a sample of small entities, the EPA found that there are minimal impacts on these entities. The weighted average of control costs as a percent of sales is 0.09 of one percent for the small firms in the sample, while a maximum value of 1.1 percent results for only two of these firms. The analysis also indicates that with the regulations, the change in measures of profitability are minimal (i.e., 0.11 of one percent change in the cost-to-sales ratio for small firms), and there are no indications of financial failures or employment losses for both small and large firms. The screening analysis for these rules is detailed in the Economic Impact Analysis (see Docket No. A–94–04).

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any one year. The EPA's total estimated annual net costs of the proposed rules is $10 million, including MIRR costs. Thus, today's rules are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that these rules contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that have involvement with these source categories and, as such, are not covered by the regulatory requirements of the proposed regulations.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Air emissions control, Associated equipment, Black oil, Condensate, Custody transfer, Equipment leaks, Glycol dehydration units, Hazardous air pollutants, Hazardous substances, Natural gas, Intergovernmental relations, Natural gas processing plants, Natural gas transmission and storage, Oil and natural gas production, Pipelines, Organic liquids distribution (non-gasoline), Reporting and recordkeeping requirements, Storage vessels, Tank batteries, Tanks, Triethylene glycol.

Dated: November 24, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Part 63 is amended by adding subpart HH to read as follows:

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

Sec.

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

§ 63.760 Applicability and designation of affected source.

(a) This subpart applies to the owners or operators of emission points, as specified in paragraph (b) of this section, that are located at oil and natural gas production facilities that meet the specified criteria in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) Facilities that process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer;

(2) Facilities that process, upgrade, or store natural gas prior to the point at which natural gas enters the natural gas transmission and storage source category or is delivered to a final end user; and

(3) Both major and area sources of HAP.

(b) The affected sources for major sources are listed in paragraph (b)(1) of this section and for area sources in paragraph (b)(2) of this section.

(1) For major sources, the affected source shall comprise each emission point located at a facility that meets the criteria specified in paragraph (a) of this section and listed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(i) Each glycol dehydration unit;

(ii) Each storage vessel with flash emissions;

(iii) The group of all ancillary equipment, except compressors; and

(iv) Compressors intended to operate in volatile organic hazardous air pollutant service (as defined in § 63.761).

(2) For area sources, the affected source includes each triethylene glycol dehydration unit located at a facility that meets the criteria specified in paragraph (a) of this section.

(c) [Reserved]

(d) The owner or operator of a facility that does not contain an affected source as specified in paragraph (b) of this section is not subject to the requirements of this subpart.

(e) The owner or operator of a facility that exclusively processes, stores, or transfers black oil (as defined in § 63.761) is not subject to the requirements of this subpart.

(f) The owner or operator of an affected source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The owner or operator of an affected source the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the provisions of the subpart as expeditiously as practical after [the date of publication of the final rule], but no later than three years after [the date of publication of the final rule] except as provided for in § 63.6(i).

(2) The owner or operator of an affected source the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon startup or [the date of publication of the final rule], whichever date is later.

(g) The following provides owners or operators of an affected source with information on overlap of this subpart with other regulations for equipment leaks.

(1) After the compliance dates specified in paragraph (f) of this section, ancillary equipment that is subject to this subpart and that is also subject to and controlled under the provisions of 40 CFR part 60, subpart KKK is only required to comply with the requirements of 40 CFR part 60, subpart KKK.

(2) After the compliance dates specified in paragraph (f) of this section, ancillary equipment that is subject to this subpart and is also subject to and controlled under the provisions of 40 CFR part 61, subpart V is only required to comply with the requirements of 40 CFR part 61, subpart V.

(3) After the compliance dates specified in paragraph (f) of this section, ancillary equipment that is subject to this subpart and is also subject to and controlled under the provisions of subpart H of this part is only required to comply with the requirements of subpart H of this part.

(h) An owner or operator of an affected source that is a major source or located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 permitting requirements. Unless otherwise required by the State, the owner or operator of an area source subject to the provisions this subpart is not required to obtain a permit under part 70 of title 40 of the Code of Federal Regulations.

§ 63.761 Definitions.

All terms used in this subpart shall have the meaning given them in the Clean Air Act, subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Alaskan North Slope means the approximately 180,000 square kilometer area (69,000 square mile area) extending from the Brooks Range to the Arctic Ocean.

Ancillary equipment means any of the following pieces of equipment: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, or product accumulator vessels.

API gravity means the weight per unit volume of hydrocarbon liquids as measured by a system recommended by the American Petroleum Institute (API) and is expressed in degrees.

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels with the potential for flash emissions.

Average concentration, as used in this subpart, means the annual average flow rate, as determined according to the procedures specified in § 63.772(b).

Black oil means hydrocarbon (petroleum) liquid with a gas-to-oil ratio (GOR) less than 50 cubic meters (1,750 cubic feet) per barrel and an API gravity less than 40 degrees.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and that is not an incinerator.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device or back into the process. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the process shall not be considered a closed vent system and is not subject to closed vent system standards.

Combustion device means an individual unit of equipment such as a flare, incinerator, process heater, or boiler used for the combustion of volatile organic hazardous air pollutant vapors.

Compressor means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the drive shaft.

Condensate means hydrocarbon liquid that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions.

Continuous recorder means a data recording device that either records an instantaneous data value at least once

every 15 minutes or records 15-minute or more frequent block average values.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Control device means any equipment used for recovering or oxidizing hazardous air pollutant (HAP) and volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused, returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, are not considered to be control devices.

Cover means a device which is placed on top of or over a material such that the entire surface area of the material is enclosed and sealed, to reduce emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, and gauge wells) if those openings are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed, provided that each opening is closed and sealed when the opening is not in use. In addition, a cover may have one or more safety devices. Examples of a cover include a fixed-roof installed on a tank, an external floating roof installed on a tank, and a lid installed on a drum or other container.

Custody transfer means the transfer of hydrocarbon liquids or natural gas, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation. For the purposes of this subpart, the EPA considers the point at which natural gas enters a natural gas processing plant as a point of custody transfer.

Equipment leak means emissions of hazardous air pollutants from a pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, or instrumentation system.

Facility means any grouping of equipment: where hydrocarbon liquids are processed, upgraded, or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission source category. For the purpose of a major source determination, means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface unit areas, surface fee tracts, or surface lease tracts shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, graded pad sites, and natural gas processing plants.

Field natural gas means natural gas extracted from a production well prior to entering the first stage of processing, such as dehydration.

Fill or *filling* means the introduction of a material into a storage vessel.

Fixed-roof means a cover that is mounted on a waste management unit or storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flash tank. See definition for gas-condensate-glycol (GCG) separator.

Flow indicator means a device that indicates whether gas flow is present in a line.

Gas-condensate-glycol (GCG) separator means a two-or three-phase separator through which the ''rich'' glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Gas-to-oil ratio (GOR) means the number of standard cubic meters (cubic feet) of gas produced per barrel of crude oil or other hydrocarbon liquid.

Glycol dehydration unit means a device in which a liquid glycol absorbent directly contacts a natural gas stream (that is circulated counter current to the glycol flow) and absorbs water vapor in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes ''rich'' glycol. This glycol is then regenerated by distilling the water and other gas stream constituents in the glycol dehydration unit reboiler. The distilled or ''lean'' glycol is then recycled back to the absorber.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent or the vent from the GCG separator (flash tank).

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Act. All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining applicability and compliance.

Hydrocarbon liquid means any naturally occurring, unrefined petroleum liquid.

In VOHAP service means that a piece of ancillary equipment either contains or contacts a fluid (liquid or gas) which has a total volatile organic HAP (VOHAP) concentration equal to or greater than 10 percent by weight as determined according to the provisions of 40 CFR 61.245(d).

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control;

(2) Emissions from processes, operations, or equipment that are not part of the same facility, as defined in this section, shall not be aggregated; and

(3) For facilities that are production field facilities, only HAP emissions from glycol dehydration units and storage tanks with flash emission potential shall be counted in a major source determination.

Natural gas means the gaseous mixture of hydrocarbon gases and vapors, primarily consisting of methane, ethane, propane, butane, pentane, and hexane, along with water vapor and other constituents.

Natural gas liquids (NGLs) means the hydrocarbons, such as ethane, propane, butane, pentane, natural gasoline, and condensate that are extracted from field gas.

Natural gas processing plant (gas plant) means any processing site engaged in:

(1) The extraction of natural gas liquids from field gas; or

(2) The fractionation of mixed NGLs to natural gas products.

No detectable emissions means no escape of HAP from a device or system to the atmosphere as determined by:

(1) Testing the device or system in accordance with the requirements of § 63.772(c); and

(2) No visible openings or defects in the device or system such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds exiting a recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Point of material entry means at the point where a material first enters a source subject to this subpart.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50-percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Produced water means water:

(1) That is extracted from the earth from an oil or natural gas production well; or

(2) That is separated from crude oil, condensate, or natural gas after extraction.

Production field facilities means those facilities located prior to the point of custody transfer.

Production well means any hole drilled in the earth from which crude oil, condensate, or field natural gas is extracted.

Relief device means a device used only to release an unplanned, non-routine discharge. A relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Safety device means a device that is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and the device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Storage vessel with the potential for flash emissions means any storage vessel that contains a hydrocarbon with a GOR equal to or greater than 50 cubic meters (1,750 cubic feet) per barrel or an API gravity equal to or greater than 40 degrees.

Surface site means the graded pad, gravel pad, foundation, platform, or immediate physical location upon which equipment is physically affixed.

Tank battery means a collection of equipment used to separate, treat, store, and transfer crude oil, condensate, natural gas, and produced water. A tank battery typically receives crude oil, condensate, natural gas, or some combination of these extracted products from several production wells for accumulation and separation prior to transmission to a natural gas plant or petroleum refinery. A tank battery may or may not include a glycol dehydration unit.

Temperature monitoring device means a unit of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in °C, or ±0.5°C, whichever is greater.

Total organic compounds or *TOC*, as used in this subpart, means those compounds measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Urban area is defined by use of the U.S. Department of Commerce's Bureau of the Census statistical data to classify every county in the U.S. into one of the three classifications:

(1) Urban-1 areas which consist of metropolitan statistical areas (MSA) with a population greater than 250,000;

(2) Urban-2 areas which are defined as all other areas designated urban by the Bureau of Census (areas which comprise one or more central places and the adjacent densely settled surrounding fringe that together have a minimum of 50,000 persons). The urban fringe consists of contiguous territory having a density of at least 1,000 persons per square mile; or

(3) Rural areas which are those counties not designated as urban by the Bureau of the Census.

Volatile organic hazardous air pollutant concentration or *VOHAP concentration* means the fraction by weight of all HAP contained in a material as determined in accordance with procedures specified in § 63.772(a).

§ 63.762 [Reserved]

§ 63.763 [Reserved]

§ 63.764 General standards.

(a) Table 2 of this subpart specifies the provisions of subpart A (General Provisions) that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(b) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(c) Except as specified in paragraph (e) of this section, the owner or operator of an affected source located at an existing or new major source shall comply with the standards in this subpart as specified in paragraphs (c)(1) through (c)(3) of this section.

(1) For each glycol dehydration unit process vent subject to this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(i) The owner or operator shall comply with the control requirements for glycol dehydration unit process vents specified in § 63.765;

(ii) The owner or operator shall comply with the monitoring requirements of § 63.773; and

(iii) The owner or operator shall comply with the recordkeeping and reporting requirements of §§ 63.774 and 63.775.

(2) For each storage vessel with the potential for flash emissions and an actual throughput of hydrocarbon liquids equal to or greater than 500 barrels per day (BPD), the owner or operator shall comply with the requirements specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) The control requirements for storage vessels specified in § 63.766;

(ii) The monitoring requirements of § 63.773; and

(iii) The recordkeeping and reporting requirements of §§ 63.774 and 63.775.

(3) For ancillary equipment (as defined in § 63.761) at a natural gas processing plant subject to this subpart, the owner or operator shall comply with the requirements for equipment leaks specified in § 63.769.

(d) The owner or operator of an affected source located at an area source of HAP emissions shall comply with the standards in this subpart as specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The control requirements for glycol dehydration unit process vents specified in § 63.765;

(2) The monitoring requirements of § 63.773; and

(3) The recordkeeping and reporting requirements of §§ 63.774 and 63.775.

(e) The owner or operator is exempt from the requirements of paragraphs (c)(1) and (d) of this section if the actual annual average flow of gas to the glycol dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day) or emissions of benzene from the unit to the atmosphere are less than 0.9 megagram per year (1 ton per year). The flow of natural gas to the unit and the emissions of benzene from the unit shall be determined by the procedures specified in § 63.772(b). This determination must be made available to the Administrator upon request. In addition, the owner or operator is exempt from the requirements of paragraph (d) of this section if the glycol dehydration unit is not located in a county classified as an Urban area as defined in § 63.761.

(f) Each owner or operator of a major HAP source subject to this subpart is required to apply for a 40 CFR part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under 40 CFR part 70, the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the owner or operator of a source shall apply to the EPA Regional Office pursuant to 40 CFR part 71.

(g) Unless otherwise required by the State, the owner or operator of an area source subject to the provisions of this subpart is not required to obtain a permit under part 70 of title 40 of the Code of Federal Regulations.

(h) An owner or operator of an affected source that is:

(1) A major source or located at a major source; or

(2) An area source subject to the provisions of this subpart that is in violation of an operating parameter value is in violation of the applicable emission limitation or standard.

§ 63.765 Glycol dehydration unit process vents standards.

(a) This section applies to each glycol dehydration unit process vent that must be controlled for HAP emissions as specified in § 63.764(c)(1)(i) and (d)(1).

(b) Except as provided in paragraph (c) of this section, an owner or operator of a glycol dehydration unit process vent shall comply with the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by connecting the process vent to a control device through a closed-vent system designed and operated in accordance with the requirements of § 63.771(c) and (d).

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment complying with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line through a closed-vent system designed and operated in accordance with the requirements of § 63.771(c).

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the glycol dehydration unit reboiler vent and GCG separator (flash tank) vent (if present) are reduced by 95 percent through process modifications.

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total HAP emissions to the atmosphere from the glycol dehydration unit reboiler vent and GCG separator (flash tank) vent are reduced by 95 percent.

§ 63.766 Storage vessel standards.

(a) This section applies to each storage vessel that must be controlled for HAP emissions as specified in § 63.764(c)(2).

(b) The owner or operator of a storage vessel shall comply with one of the control requirements specified in paragraphs (b)(1) through (b)(3) of this section.

(1) The owner or operator of a storage vessel using a cover that is connected through a closed-vent system to a control device shall use a cover that is designed and operated in accordance with the requirements of § 63.771(b). The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.771(c) and (d).

(2) The owner or operator of a pressure storage vessel that is designed to operate as a closed system shall operate the storage vessel with no detectable emissions at all times that material is in the storage vessel, except as provided for in paragraph (c) of this section.

(3) The owner or operator of a storage vessel using a fixed-roof cover with an internal floating roof shall use a fixed-roof cover with an internal floating roof designed and operated in accordance with the requirements of 40 CFR 60.112b(a)(1).

(c) One or more safety devices that vent directly to the atmosphere may be used on the storage vessel and air emission control equipment complying with paragraphs (b)(1) through (b)(3) of this section.

§ 63.767 [Reserved]

§ 63.768 [Reserved]

§ 63.769 Equipment leak standards.

(a) This section applies to ancillary equipment and compressors (as defined in § 63.761) at natural gas processing plants that contain or contact a fluid (liquid or gas) that has a total VOHAP concentration equal to or greater than 10 percent by weight (determined according to the provisions of 40 CFR 61.245(d)) and that operates equal to or greater than 300 hours per calendar year.

(b) This section does not apply to ancillary equipment and compressors for which the owner or operator is meeting the requirements specified in subpart H of this part; or is meeting the requirements specified in 40 CFR part 60, subpart KKK.

(c) For each piece of ancillary equipment and compressors subject to this section located at an existing or new source, the owner or operator shall meet the requirements specified in 40 CFR 61.241 through 61.247, except as specified in paragraphs (c)(1) through (c)(8) of this section.

(1) Each pressure relief device in gas/vapor service shall be monitored quarterly and within 5 days after each pressure release to detect leaks, except under the following conditions.

(i) If an owner or operator has obtained permission from the Administrator to use an alternative means of emission limitation that

achieves a reduction in emissions of VOHAP at least equivalent to that achieved by the control required in this subpart.

(ii) If the pressure relief device is located in a nonfractionating facility that is monitored only by non-facility personnel, it may be monitored after a pressure release the next time the monitoring personnel are on site, instead of within 5 days. Such a pressure relief device shall not be allowed to operate for more than 30 days after a pressure release without monitoring.

(2) For pressure relief devices, if an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(3) For pressure relief devices, when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except if a delay in repair of equipment is granted under 40 CFR 61.242–10.

(4) Sampling connection systems are exempt from the requirements of 40 CFR 61.242–5.

(5) Pumps in VOHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant that does not have the design capacity to process 283 standard cubic meters per day (10 million standard cubic feet per day) or more of field gas are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and paragraphs 61.242–7(a), and paragraphs (c)(1) through (c)(3) of this section.

(6) Pumps in VOHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a natural gas processing plant that is located on the Alaskan North Slope are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and 61.242–7(a), and paragraphs (c)(1) through (c)(3) of this section.

(7) Reciprocating compressors in wet gas service are exempt from the compressor control requirements of 40 CFR 61.242–3.

(8) Flares used to comply with this subpart shall comply with the requirements of § 63.11(b).

§ 63.770 [Reserved]

§ 63.771 Control requirements.

(a) This section applies to each cover, closed-vent system, and control device installed and operated by the owner or operator to control air emissions.

(b) *Cover requirements.* (1) The cover and all openings on the cover (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable emissions when all cover openings are secured in a closed, sealed position.

(2) The owner or operator shall determine that the cover operates with no detectable emissions by testing each opening on the cover in accordance with the procedures specified in § 63.772(c) the first time material is placed into the unit on which the cover is installed. If a leak is detected and cannot be repaired at the time that the leak is detected, the material shall be removed from the unit and the unit shall not be used until the leak is repaired.

(3) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit;

(iii) To inspect, maintain, repair, or replace equipment located inside the unit; or

(iv) To vent liquids, gases, or fumes from the unit through a closed-vent system to a control device designed and operated in accordance with the requirements of paragraphs (c) and (d) of this section.

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in the unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) For each bypass device, except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

(B) Secure the valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device used to reduce HAP emissions in accordance with the standards of this subpart shall be one of the control devices specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater as determined in accordance with the requirements of § 63.772(e);

(B) Reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.772(e); or

(C) Operates at a minimum residence time of 0.5 second at a minimum temperature of 760°C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g. carbon adsorption system or condenser) or other control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater as determined in accordance with the requirements of § 63.772(e).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) Each control device used to comply with this subpart shall be operated at all times when material is placed in a unit vented to the control device, except when maintenance or repair of a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section as specified in paragraphs (d)(3)(i) through (d)(3)(iv) of this section.

(i) An owner or operator shall demonstrate using either a performance test as specified in paragraph (d)(3)(iii) of this section or a design analysis as specified in paragraph (d)(3)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel; or

(D) A boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in § 63.11(b).

(iii) For a performance test conducted to meet the requirements of paragraph (d)(3)(i) of this section, the owner or operator shall use the test methods and procedures specified in § 63.772(e).

(iv) For a design analysis conducted to meet the requirements of paragraph (d)(3)(i) of this section, the design analysis shall meet the requirements specified in paragraphs (d)(3)(iv)(A) and (d)(3)(iv)(B) of this section.

(A) The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable control device as specified in paragraphs (d)(3)(iv)(A)(*1*) through (d)(3)(iv)(A)(*6*) of this section.

(*1*) For a thermal vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(*2*) For a catalytic vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(*3*) For a boiler or process heater, the design analysis shall include the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(*4*) For a condenser, the design analysis shall include the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(*5*) For a carbon adsorption system that regenerates the carbon bed directly on-site in a control device such as a fixed-bed adsorber, the design analysis shall include the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(*6*) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device, such as a carbon canister, the design analysis shall include the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems will incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(B) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (d)(3)(iii) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(4) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(i) The control device shall be operating at all times when gases, vapors, and fumes are vented from the unit or units through the closed-vent system to the control device.

(ii) For each control device monitored in accordance with the requirements of § 63.773(d), the owner or operator shall operate the control device such that the actual value of each operating parameter required to be monitored in accordance with the requirements of § 63.773(d)(3) is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the control device in accordance with the requirements of § 63.773(d)(4).

(iii) Failure by the owner or operator to operate the control device in accordance with the requirements of paragraph (d)(4)(ii) of this section shall constitute a violation of the applicable emission standard of this subpart.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as specified in paragraphs (c)(5)(i) and (c)(5)(ii) of this section.

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) All carbon removed from the control device shall be managed in one of the following manners:

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designed and operated the unit in accordance with the requirements of 40 CFR part 264, subpart X; or certified compliance with the interim status requirements of 40 CFR part 265, subpart P.

(B) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270, and designed and operated the unit in accordance with the requirements of 40 CFR part 264, subpart O.

(C) Burned in a boiler or industrial furnace for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designed

and operated the unit in accordance with the requirements of 40 CFR part 266, subpart H, or certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

§ 63.772 Test methods and compliance procedures.

(a) Determination of material VOHAP or HAP concentration for applicability to the equipment leak standards under this subpart (§ 63.769).

(1) An owner or operator is not required to determine the VOHAP or HAP concentration for materials placed in units subject to this subpart using air emission controls in accordance with the requirements of § 63.766.

(2) An owner or operator shall perform a VOHAP or HAP concentration determination at the following times:

(i) When the material enters the facility in a storage vessel, the owner or operator shall perform a VOHAP or HAP concentration determination for each storage vessel.

(ii) When the material enters the facility as a continuous, uninterrupted flow of material through a pipeline or other means, the owner or operator shall:

(A) Perform an initial VOHAP or HAP concentration determination before the first time any portion of the material is placed in a unit subject to this subpart; and

(B) Perform a new VOHAP or HAP concentration determination whenever changes to the material could potentially cause the VOHAP or HAP concentration of the material to increase to a level that is equal to or greater than the applicable VOHAP or HAP concentration limits specified in § 63.769.

(3) An owner or operator shall determine the VOHAP or HAP concentration of a material using either direct measurement as specified in paragraph (a)(4) of this section or knowledge of the material as specified in paragraph (a)(5) of this section.

(4) Direct measurement to determine VOHAP or HAP concentration.

(i) For the purpose of determining the VOHAP or HAP concentration at the point of entry, samples of the material shall be collected from the storage vessel, pipeline, or other device used to deliver the material to the facility before the material is either:

(A) Combined with other material; or

(B) Conveyed, handled, or otherwise managed in such a manner that the surface of the material is open to the atmosphere.

(ii) For the purpose of determining the VOHAP or HAP concentration at the point of treatment, samples shall be collected at or after the point of treatment but before the point where this material is either:

(A) Combined with other materials;

(B) Conveyed, handled, or otherwise managed in such a manner that the surface of the material is open to the atmosphere; or

(C) Placed in a unit subject to this subpart.

(iii) The VOHAP or HAP concentration on a mass-weighted average basis shall be determined using the procedure specified in paragraphs (a)(4)(iii)(A) through (a)(4)(iii)(D) of this section when the material flows as a continuous stream for periods less than or equal to 1 hour.

(A) A sufficient number of samples, but no less than four samples, shall be collected to represent the VOHAP or HAP composition for the entire quantity of material. All of the samples shall be collected within a 1-hour period.

(B) Each sample shall be collected in accordance with the requirements specified in ''Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods,'' EPA Publication No. SW–846.

(C) Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 305, 40 CFR part 63, appendix A or Method 25D, 40 CFR part 60, appendix A.

(D) The VOHAP or HAP concentration shall be calculated by using the results for all samples analyzed in accordance with paragraph (a)(4)(iii)(C) of this section and the following equation:

$$\overline{C} = \frac{1}{n} \times \sum_{i=1}^{n} C_i$$

where:

C=VOHAP or HAP concentration of the material on a mass-weighted basis, parts per million by weight.

I=Individual sample ''I'' of the material.

n=Total number of samples of material collected (at least 4) within a 1-hour period.

C_i=Measured VOHAP or HAP concentration of sample ''I'' as determined in accordance with the requirements of § 63.772(a)(4)(iii)(C), parts per million by weight.

(iv) The VOHAP or HAP concentration on a mass-weighted average basis shall be determined using the procedures specified in paragraphs (a)(4)(iv)(A) through (a)(4)(iv)(E) of this section when the material flows as a continuous stream of material for periods greater than 1-hour.

(A) The averaging period to be used for determining the VOHAP concentration on a mass-weighted average basis shall be designated and recorded. The averaging period shall represent any time interval that the material flows until the time that a new VOHAP or HAP concentration determination must be performed pursuant to the requirements of paragraph (b) of this section. The averaging period shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected to represent the complete range of VOHAP or HAP compositions and VOHAP or HAP quantities that occur in the material stream during the entire averaging period due to normal variations in the operating conditions for the source, process, or unit generating the material. Examples of such normal variations are seasonal variations in material quantity, cyclic process operations, or fluctuations in ambient temperature.

(C) Each sample shall be collected in accordance with the requirements specified in ''Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods,'' EPA Publication No. SW–846. Sufficient information shall be recorded to document the material quantity and the operating conditions for the source, process, or unit generating the material represented by each sample collected.

(D) Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 305, 40 CFR part 63, appendix A or Method 25D, 40 CFR part 60, appendix A.

(E) The VOHAP or HAP concentration on a mass-weighted average basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (a)(4)(vi)(D) of this section and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left(Q_i \times C_i\right)$$

where:

C=VOHAP or HAP concentration of the material on a mass weighted basis, parts per million by weight.

I=Individual sample ''I'' of the material.

n=Total number of samples of the material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i=Mass quantity of stream represented by C_i, kg/hr.

Q_T=Total mass quantity of material during the averaging period, kilograms per hour.

C_i=Measured VOHAP or HAP concentration of sample ''I'' as determined in accordance with the requirements of

§ 63.772(a)(4)(iv)(D), parts per million by weight.

(5) Knowledge of the material to determine VOHAP or HAP concentration.

(i) Sufficient information shall be prepared and recorded that documents the basis for the owner or operator's knowledge of the material's VOHAP or HAP concentration. Examples of information that may be used as the basis for knowledge of the material include: VOHAP or HAP material balances for the source, process, or unit generating the material; species-specific VOHAP or HAP chemical test data for the material from previous testing still applicable to the current operations; documentation that material is generated by a process for which no materials containing VOHAP or HAP are used; or previous test data for other locations managing the same type of material.

(ii) If test data are used as the basis for knowledge of the material, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the VOHAP or HAP concentration. For example, an owner or operator may use HAP concentration test data that are validated in accordance with Method 301, 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) An owner or operator using species-specific VOHAP or HAP chemical concentration test data as the basis for knowledge of the material that is a produced water stream may adjust the test data results to the corresponding total VOHAP or HAP concentration value that would be reported had the samples been analyzed using Method 305, 40 CFR part 63, appendix A. To adjust these data, the measured concentration for each individual VOHAP or HAP chemical species contained in the material is multiplied by the appropriate species-specific adjustment factor listed in table 34 in the appendix to 40 CFR part 63, subpart G.

(b) Determination of glycol dehydration unit flow rate or benzene emissions. The procedures of this paragraph shall be used by an owner or operator to determine flow rate or benzene emissions to meet the criteria for an exemption from control requirements under § 63.764(e).

(1) The determination of actual flow rate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures flow to the glycol dehydration unit with an accuracy of plus or minus 2 percent; or

(ii) The owner or operator shall document that the actual annual average flow rate of the dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day).

(2) The determination of benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (b)(2)(i) or (b)(2)(ii) of this section.

(i) The owner or operator shall determine annual benzene emissions using the model GRI–GLYCalc™, Version 3.0 or higher. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit; or

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18, 40 CFR Part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be multiplied by $1.1023\ E^{-03}$ to convert to tons per year.

(c) No detectable emissions test procedure.

(1) The no detectable emissions test procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except that the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration less than 10,000 parts per million by volume.

(5) The background level shall be determined according to the procedures in Method 21, 40 CFR part 60, appendix A.

(6) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 parts per million by volume. If the difference is less than 500 parts per million by volume, then no HAP emissions are detected.

(d) [Reserved]

(e) Control device performance test procedures. This paragraph applies to the performance testing of control devices. Owners or operators may elect to use the alternative procedures in paragraph (f) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the inlet and outlet of the control device.

(i) To determine compliance with the control device percent reduction requirement specified in § 63.771(d)(1), sampling sites shall be located at the inlet of the control device as specified in paragraphs (e)(1)(i)(A) and (e)(1)(i)(B) of this section, and at the outlet of the control device.

(A) The control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air, or as a secondary fuel, into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total HAP or TOC concentration, as applicable, in all vent streams and primary and secondary fuels.

(ii) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the sampling site shall be located at the outlet of the device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with the control device percent reduction requirement in § 63.771(d)(1)(i), the owner or operator shall use Method 18, 40 CFR part 60, appendix A; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A may be used. The following procedures shall be used to calculate percent reduction efficiency:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall

be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(A) The following equations shall be used: where:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj}= Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 =Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20°C.

(B) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, 40 CFR part 60, appendix A shall be summed using the equation in paragraph (e)(3)(ii)(A) of this section.

(C) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equation in paragraph (e)(3)(ii)(A) of this section.

(iii) The percent reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows

$$R_{cd} = \frac{E_i - E_o}{E_i}\times 100\%$$

Where:

R_{cd} =Control efficiency of control device, percent.

E_i =Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (e)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o =Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (e)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(4) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the owner or operator shall use Method 18, 40 CFR part 60, appendix A to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that has been validated according to Method 301, 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) The minimum sampling time for each run shall be 1 hour, in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The TOC concentration or total HAP concentration shall be calculated according to paragraph (e)(4)(ii)(A) or (e)(4)(ii)(B) of this section.

(A) The TOC concentration is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x}\frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(B) The total HAP concentration shall be computed according to the equation in paragraph (e)(4)(ii)(A) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(iii) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A shall be used to determine the oxygen concentration. The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(B) The TOC or HAP concentration shall be corrected for percent oxygen by using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

Cc = TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(f) As an alternative to the procedures in paragraph (e) of this section, an owner or operator may elect to use the procedures documented in the Gas Research Institute Report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions'' (GRI–95/0368.1).

§ 63.773 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of §§ 63.765 and 63.766.

(b) *Cover inspection and monitoring requirements.* (1) Each cover used in accordance with the requirements of § 63.766 shall be visually inspected and monitored for no detectable emissions by the owner or operator using the procedure specified in paragraph (b)(3) of this section, except as provided for in paragraph (b)(2) of this section.

(2) An owner or operator is exempt from performing the cover inspection and monitoring requirements specified in paragraph (b)(3) of this section for the following units:

(i) A storage vessel internal floating roof that is inspected and monitored in

accordance with the requirements of 40 CFR 60.113b(a); or

(ii) A storage vessel external floating roof that is inspected and monitored in accordance with the requirements of 40 CFR 60.113b(b).

(iii) If a storage vessel is buried partially or entirely underground, an owner or operator is required to perform the cover inspection and monitoring requirements specified in paragraph (b)(3) of this section only for those portions of the storage vessel cover and those connections to the storage vessel cover or tank body (e.g., fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere.

(3) Inspection and monitoring of a cover shall be performed as follows:

(i) The cover and all cover openings shall be initially visually inspected and monitored for no detectable emissions on or before the date that the unit on which the cover is installed becomes subject to the provisions of this subpart and at other times as requested by the Administrator.

(ii) At least once every six months following the initial visual inspection and monitoring for no detectable emissions required under paragraph (b)(3)(i) of this section, the owner and operator shall visually inspect and monitor the cover and each cover opening, except for following cover openings:

(A) A cover opening that has continuously remained in a closed, sealed position for the entire period since the last time the cover opening was visually inspected and monitored for no detectable emissions;

(B) A cover opening that is designated as unsafe to inspect and monitor in accordance with paragraph (b)(3)(v) of this section;

(C) A cover opening on a cover installed and placed in operation before February 6, 1998, that is designated as difficult to inspect and monitor in accordance with paragraph (b)(3)(vi) of this section.

(iii) To visually inspect a cover, the owner or operator shall view the entire cover surface and each cover opening in a closed, sealed position for evidence of any defect that may affect the ability of the cover or cover opening to continue to operate with no detectable emissions. A visible hole, gap, tear, or split in the cover surface or a cover opening is defined as a leak which shall be repaired in accordance with paragraph (b)(3)(vii) of this section.

(iv) To monitor a cover for no detectable emissions, the owner or operator shall use the following procedure:

(A) For all cover connections and seals, except for the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates an instrument concentration reading greater than 500 parts per million by volume minus the background level, then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (b)(3)(vii) of this section.

(B) For the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates an instrument concentration reading greater than 10,000 parts per million by volume then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (b)(3)(vii) of this section.

(v) An owner or operator may designate a cover as an unsafe to inspect and monitor cover if all of the following conditions are met:

(A) The owner or operator determines that inspection or monitoring of the cover would expose a worker to dangerous, hazardous, or other unsafe conditions.

(B) The owner or operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (b)(3)(iii) of this section and monitor the cover using the procedure specified in paragraph (b)(3)(iv) of this section as frequently as practicable during those times when a worker can safely access the cover.

(vi) An owner or operator may designate a cover installed and placed in operation before February 6, 1998 as a difficult to inspect and monitor cover if all of the following conditions are met:

(A) The owner or operator determines that inspection or monitoring the cover requires elevating a worker to a height greater than 2 meters (approximately 7 feet) above a support surface; and

(B) The owner and operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (b)(3)(iii) of this section, and monitors the cover using the procedure specified in paragraph (b)(3)(iv) of this section at least once per calendar year.

(vii) When a leak is detected by either of the methods specified in paragraph (b)(3)(iii) or (b)(3)(iv) of this section, the owner or operator shall make a first attempt at repairing the leak no later than five calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than 15 calendar days after the leak is detected. If repair of the leak cannot be completed within the 15-day period, then the owner or operator shall not add material to the unit on which the cover is installed until the repair of the leak is completed.

(c) *Closed-vent system inspection and monitoring requirements.* (1) The owner or operator shall visually inspect and monitor each closed-vent system for no detectable emissions at the following times:

(i) On or before the date that the unit connected to the closed-vent system becomes subject to the provisions of this subpart;

(ii) At least once per year after the date that the closed-vent system is inspected in accordance with the requirements of paragraph (c)(1)(i) of this section; and

(iii) At other times as requested by the Administrator.

(2) To visually inspect a closed-vent system, the owner or operator shall view the entire length of ductwork, piping and connections to covers and control devices for evidence of visible defects (such as holes in ductwork or piping and loose connections) that may affect the ability of the system to operate with no detectable emissions. A visible hole, gap, tear, or split in the closed-vent system is defined as a leak which shall be repaired in accordance with paragraph (c)(4) of this section.

(3) To monitor a closed-vent system for no detectable emissions, the owner or operator shall use Method 21, 40 CFR part 60, appendix A to test each closed-vent system joint, seam, or other connection. For the annual leak detection monitoring after the initial leak detection monitoring, the owner or operator is not required to monitor those closed-vent system components which continuously operate at a pressure below atmospheric pressure or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

(4) When a leak is detected by either of the methods specified in paragraph (c)(2) or (c)(3) of this section, the owner or operator shall make a first attempt at repairing the leak no later than five calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than 15 calendar days after the leak is detected.

(d) *Control device monitoring requirements.* (1) For each control device, except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous monitoring system in accordance with the requirements of paragraphs (d)(3) through (d)(5) of this

section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is continuously achieving the applicable performance requirements of § 63.771.

(2) An owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(3) through (d)(5) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with primary fuel; or

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. The continuous recorder shall be a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minute or more frequent block average values. The owner or operator shall use any of the following continuous monitoring systems:

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system, an integrating regeneration stream flow monitoring device equipped with a continuous recorder and a carbon bed temperature monitoring device equipped with a continuous recorder. The integrating regeneration stream flow monitoring device shall have an accuracy of ±10 percent and measure the total regeneration stream mass flow during the carbon bed regeneration cycle. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater and measure the carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle and the duration of the carbon bed steaming cycle.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8(f)(1) through (f)(5).

(4) For each operating parameter monitored in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771. Each minimum or maximum operating parameter value shall be established as follows:

(i) If the owner or operator conducts performance tests in accordance with the requirements of § 63.771 to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771, then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis and manufacturer recommendations.

(ii) If the owner or operator uses control device design analysis in accordance with the requirements of § 63.771(d)(3)(iv) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and the control device manufacturer's recommendations.

(5) The owner or operator shall regularly inspect the data recorded by the continuous monitoring system to determine whether the control device is operating in accordance with the applicable requirements of § 63.771(d).

§ 63.774 Recordkeeping requirements.

(a) The recordkeeping provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners and operators of sources subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a source subject to this subpart shall maintain the records specified in paragraphs (b)(1) and (b)(2) of this section in accordance with the requirements of § 63.10(b)(1) (General Provisions):

(1) Records specified in § 63.10(b)(2);

(2) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.773(d).

(c) The owner or operator of an area source subject to the control requirements for triethylene glycol dehydration unit process vents in § 63.765 is exempt from the requirements of § 63.6(e)(3) and § 63.10(b)(2)(iv) and (b)(2)(v).

(d) An owner or operator that is exempt from control requirements

under § 63.764(e) shall maintain a record of the design capacity (in terms of natural gas flow rate to the unit per day) of each glycol dehydration unit that is not controlled according to the requirements of § 63.764(c)(1)(i) and (d)(1).

§ 63.775 Reporting requirements.

(a) The reporting provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners and operators of sources subject to these subparts are listed in Table 2 of this subpart.

(b) Each owner or operator of a major source subject to this subpart shall submit the following reports to the Administrator:

(1) An Initial Notification described in § 63.9(a) through (d), except that the notification required by § 63.9(b)(2) shall be submitted not later than one year after the effective date of this standard.

(2) A Notification of Performance Tests specified in §§ 63.7 and 63.9(e) and (g).

(3) A Notification of Compliance Status specified in § 63.9(h).

(4) Performance test reports specified in § 63.10(d)(2) and performance evaluation reports specified in § 63.10(e)(2). Separate performance evaluation reports as described in § 63.10(e)(2) are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(5) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) shall be submitted as required. Separate startup, shutdown, or malfunction reports as described in § 63.10(d)(5) are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(6) The excess emission and CMS performance report and summary report specified in § 63.10(e)(3) shall be submitted on a semi-annual basis (i.e., once every 6-month period). The summary report shall be entitled ''Summary Report—Gaseous Excess Emissions and Continuous Monitoring System Performance.''

(7) The owner or operator shall meet the requirements specified in paragraph (b) of this section for any emission point or material that becomes subject to the standards in this subpart due to an increase in flow, concentration, or other parameters equal to or greater than the limits specified in this subpart.

(8) For each control device other than a flare used to meet the requirements of this subpart, the owner or operator shall submit the following information for each operating parameter required to be monitored in accordance with the requirements of § 63.773(d):

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in paragraph (d)(1) of this section. This explanation shall include any data and calculations used to develop the value and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1).

(9) Each owner or operator of a major source subject to this subpart that is not subject to the control requirements for glycol dehydration unit process vents in § 63.765 is exempt from all reporting requirements for major sources in this subpart.

(c) Each owner or operator of an area source subject to the control requirements of this subpart for triethylene glycol dehydration unit process vents in § 63.765 shall submit the following reports to the Administrator:

(1) An Initial Notification described in § 63.9 (a) through (d), except that the notification required by § 63.9(b)(2) shall be submitted not later than one year after the effective date of this standard.

(2) A Notification of Performance Tests specified in §§ 63.7 and 63.9 (e) and (g).

(3) A Notification of Compliance Status specified in § 63.9(h).

(4) Performance test reports specified in § 63.10(d)(2) and performance evaluation reports specified in § 63.10(e)(2). Separate performance evaluation reports as described in § 63.10(e)(2) are not required if the information is included in the report specified in paragraph (c)(6) of this section.

(5) A report describing any malfunctions that are not corrected within two calendar days of the malfunction, to be submitted within seven calendar days of the uncorrected malfunction.

(6) A summary report as specified in § 63.10(e)(3) shall be submitted on an annual basis (i.e., once every 12-month period). The summary report shall be entitled ''Summary Report—Gaseous Excess Emissions and Continuous Monitoring System Performance.''

(7) The owner or operator shall meet the requirements specified in this paragraph for any emission point or material that becomes subject to the standards in this subpart due to an increase in flow or concentration mass parameters equal to or greater than the limits specified in § 63.764 (b), (c), or (d).

(8) For each control device other than a flare used to meet the requirements of this subpart, the owner or operator shall submit the following information for each operating parameter required to be monitored in accordance with the requirements of § 63.773(d):

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in paragraph (d)(1) of this section. This explanation shall include any data and calculations used to develop the value and a description of why this value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1).

(9) Each owner or operator of an area source subject to this subpart that is not subject to the control requirements for glycol dehydration unit process vents in § 63.765 is exempt from all reporting requirements in this subpart.

§ 63.776 Delegation of authority [Reserved]

§ 63.777 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.764 through 63.771, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information demonstrating that the alternative achieves equivalent emission reductions.

§ 63.778 [Reserved]

§ 63.779 [Reserved]

TABLE 1 TO SUBPART HH.—LIST OF HAZARDOUS AIR POLLUTANTS FOR SUBPART HH

CAS Number [a]	Chemical name
75070	Acetaldehyde.
71432	Benzene (includes benzene in gasoline).
75150	Carbon disulfide.
463581	Carbonyl sulfide.
100414	Ethyl benzene.
107211	Ethylene glycol.
50000	Formaldehyde.
110543	n-Hexane.
91203	Naphthalene.
108883	Toluene.
540841	2,2,4-Trimethylpentane.
1330207	Xylenes (isomers and mixture).
95476	o-Xylene.
108383	m-Xylene.
106423	p-Xylene.

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Comment
§ 63.1(a)(1)	Yes.	
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes.	
§ 63.1(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6)–(a)(8)	Yes.	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)–(a)(14)	Yes.	
§ 63.1(b)(1)	No	Subpart HH specifies applicability.
§ 63.1(b)(2)	Yes.	
§ 63.1(b)(3)	No.	
§ 63.1(c)(1)	No	Subpart HH specifies applicability.
§ 63.1(c)(2)	Yes	Unless required by the State, area sources subject to subpart HH are exempted from permitting requirements.
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HH.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(a)(3)	Yes.	
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes.	
§ 63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes.	
§ 63.5(b)(5)	Yes.	
§ 63.5(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes.	
§ 63.5(d)(2)	Yes.	
§ 63.5(d)(3)	Yes.	
§ 63.5(d)(4)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)(1)	Yes.	
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)	Yes.	
§ 63.6(b)(2)	Yes.	
§ 63.6(b)(3)	Yes.	
§ 63.6(b)(4)	Yes.	

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Comment
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)	Yes.	
§ 63.6(c)(2)	Yes.	
§ 63.6(c)(3)–(c)(4)	No	Sections reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes/No	Area sources exempt from paragraph (e)(3).
§ 63.6(f)(1)	Yes.	
§ 63.6(f)(2)	Yes.	
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart HH does not require continuous emissions monitoring systems.
§ 63.6(i)(1)–(i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes.	
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	Yes.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	Yes.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	No.	
§ 63.8(c)(5)–(c)(8)	Yes.	
§ 63.8(d)	Yes.	
§ 63.8(e)	Yes.	
§ 63.8(f)(1)–(f)(5)	Yes.	
§ 63.8(f)(6)	No	Subpart HH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Sources are given one year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes.	
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	No.	
§ 63.9(g)	Yes.	
§ 63.9(h)(1)–(h)(3)	Yes.	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5)–(h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes.	
§ 63.10(b)(2)	Yes/No	Area sources are exempt from paragraphs (b)(2)(iv) and (v).
§ 63.10(b)(3)	No.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(c)(4)	No	Sections reserved.
§ 63.10(c)(5)–(c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Comment
§ 63.10(c)(10)–(c)(15)	Yes.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes.	
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	Yes/No	Subpart HH requires major sources to submit a startup, shutdown and malfunction report semi-annually; area sources are exempt.
§ 63.10(e)	Yes/No	Subpart HH requires major sources to submit continuous monitoring system performance reports semi-annually; area sources are required to send these reports annually.
§ 63.10(f)	Yes.	
§ 63.11(a)–(b)	Yes.	
§ 63.12(a)–(c)	Yes.	
§ 63.13(a)–(c)	Yes.	
§ 63.14(a)–(b)	Yes.	
§ 63.15(a)–(b)	Yes.	

B. Part 63 is amended by adding subpart HHH to read as follows:

Subpart HHH—National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities

Sec.
63.1270 Applicability and designation of affected source.
63.1271 Definitions.
63.1272 [Reserved]
63.1273 [Reserved]
63.1274 General standards.
63.1275 Glycol dehydration unit process vent standards.
63.1276 [Reserved]
63.1277 [Reserved]
63.1278 [Reserved]
63.1279 [Reserved]
63.1280 [Reserved]
63.1281 Control equipment requirements.
63.1282 Test methods and compliance procedures.
63.1283 Inspection and monitoring requirements.
63.1284 Recordkeeping requirements.
63.1285 Reporting requirements.
63.1286 Delegation of authority. [Reserved]
63.1287 Alternative means of emission limitation.
63.1288 [Reserved]
63.1289 [Reserved]

Table 1 to Subpart HHH—List of Hazardous Air Pollutants (HAP) for Subpart HHH

Table 2 to Subpart HHH—Applicability of 40 CFR Part 63 General Provisions to Subpart HHH

Subpart HHH—National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners or operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user and that are major sources of hazardous air pollutant (HAP) emissions.

(b) The affected source is each glycol dehydration unit.

(c) The owner or operator of a facility that does not contain an affected source, as specified in paragraph (b) of this section, is not subject to the requirements of this subpart.

(d) The owner or operator of each affected source shall achieve compliance with the provisions of this subpart by the following dates:

(1) The owner or operator of an affected source the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the provisions of the subpart as expeditiously as practical after [the date of publication of the final rule], but no later than three years after [the date of publication of the final rule] except as provided for in § 63.6(i).

(2) The owner or operator of an affected source the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon startup or [the date of publication of the final rule], whichever date is later.

(e) An owner or operator of an affected source that is a major source or located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 permitting requirements.

§ 63.1271 Definitions.

All terms used in this subpart shall have the meaning given to them in the Clean Air Act, subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels with the potential for flash emissions.

Average concentration, as used in this subpart, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.1282(a).

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device or back into the process. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the process shall not be considered a closed vent system and is not subject to closed vent system standards.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of volatile organic compound vapors.

Compressor station means any permanent combination of equipment that supplies energy to move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minute or more frequent block average values.

Control device means any equipment used for recovering or oxidizing hazardous air pollutant (HAP) and volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused, returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be control devices.

Facility means any grouping of equipment where natural gas is processed, compressed, or stored prior to entering a pipeline to a local distribution company or to a final end user. A facility for this source category typically is: A natural gas compressor station that receives natural gas via pipeline, from an underground natural gas storage operation, from a condensate tank battery, or from a natural gas processing plant; or An underground natural gas storage operation. The emission points associated with these phases include, but are not limited to, process vents. Processes that may have vents include, but are not limited to, dehydration, and compressor station engines. Facility, for the purpose of a major source determination, means natural gas transmission and storage equipment that is located inside the boundaries of an individual surface site connected by ancillary equipment, such as gas flow lines, roads, or power lines. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Natural gas transmission and storage equipment or groupings of equipment located on different gas leases, mineral fee tracts, lease tracts, subsurface unit areas, surface fee tracts, or surface lease tracts shall not be considered part of the same facility.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is present in a line.

Gas-condensate-glycol (GCG) separator means a two-or three-phase separator through which the ''rich'' glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Glycol dehydration unit means a device in which a liquid glycol directly contacts a natural gas stream (that is circulated counter current to the glycol flow) and absorbs water vapor in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes ''rich'' glycol. This glycol is then regenerated by distilling the water and other gas stream constituents in the glycol dehydration unit reboiler. The distilled or ''lean'' glycol is then recycled back to the absorber.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent or the vent from the GCG separator (flash tank).

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Act. All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining applicability and compliance.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section shall not be physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section shall be a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to permit the incoming vent stream or combustion air.

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control; and

(2) Emissions from processes, operations, and equipment that are not part of the same facility, as defined in this section, shall not be aggregated.

Natural gas means the gaseous mixture of hydrocarbon gases and vapors, primarily consisting of methane, ethane, propane, butane, pentane, and hexane, along with water vapor and other constituents.

Natural gas transmission means the pipelines used for the long distance transport of natural gas (excluding processing). Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

No detectable emissions means no escape of hazardous air pollutants (HAP) from a device or system to the atmosphere as determined by:

(1) Testing the device or system in accordance with the requirements of § 63.1282(d); and

(2) No visible openings or defects in the device or system such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds exiting a recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Point of material entry means at the point where a material first enters a source subject to this subpart.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50-percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Safety device means a device that is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and the device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good

engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Temperature monitoring device means a unit of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in °C, or ±0.5°C, whichever is greater.

Total organic compounds or *TOC*, as used in this subpart, means those compounds measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Underground storage means the subsurface facilities utilized for storing natural gas that has been transferred from its original location for the primary purpose of load balancing, which is the process of equalizing the receipt and delivery of natural gas. Processes and operations that may be located at an underground storage facility include, but are not limited to, compression and dehydration.

§ 63.1272 [Reserved]

§ 63.1273 [Reserved]

§ 63.1274 General standards.

(a) The owner or operator of an affected source (i.e., glycol dehydration unit) located at an existing or new major source of HAP emissions shall comply with the requirements in this subpart as follows:

(1) The control requirements for glycol dehydration unit process vents specified in § 63.1275,

(2) The monitoring requirements of § 63.1283, and

(3) The recordkeeping and reporting requirements of §§ 63.1284 and 63.1285.

(b) The owner or operator is exempt from the requirements of paragraph (a) of this section if the actual annual average flow of natural gas to the glycol dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day) or emissions of benzene from the unit to the atmosphere are less than 0.9 megagram per year (1 ton per year). The flow of gas to the unit and emissions of benzene from the unit shall be determined by the procedures specified in § 63.1282(a). This determination must be made available to the Administrator upon request.

(c) Each owner or operator of a major HAP source subject to this subpart is required to apply for a part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under 40 CFR part 70, the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the owner or operator of a source shall apply to the EPA Regional Office pursuant to 40 CFR part 71.

(d) An owner or operator of an affected source that is a major source or located at a major source subject to the provisions of this subpart that is in violation of an operating parameter value is in violation of the applicable emission limitation or standard.

§ 63.1275 Glycol dehydration unit process vents standards.

(a) This section applies to each glycol dehydration unit process vent required to meet the air emission control requirements specified in § 63.1274(a).

(b) Except as provided in paragraph (c) of this section, the following air emission control requirements apply to glycol dehydration unit process vents at an existing or new source.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by connecting the process vent through a closed-vent system to a control device designed and operated in accordance with the requirements of § 63.1281(c) and (d).

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment complying with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the following:

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line through a closed-vent system designed and operated in accordance with the requirements of § 63.1281(c) and (d).

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that total HAP emissions to the atmosphere from the glycol dehydration unit reboiler vent and GCG separator (flash tank) vent (if present) are reduced by 95 percent through process modifications.

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total HAP emissions to the atmosphere from the glycol dehydration unit reboiler vent and GCG separator (flash tank) vent are reduced by 95 percent.

§ 63.1276 [Reserved]

§ 63.1277 [Reserved]

§ 63.1278 [Reserved]

§ 63.1279 [Reserved]

§ 63.1280 [Reserved]

§ 63.1281 Control equipment requirements.

(a) This section applies to each closed-vent system, and control device installed and operated by the owner or operator to control air emissions in accordance with the standards of this subpart.

(b) [Reserved]

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in the unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the following requirements:

(i) For each bypass device except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

(B) Secure the valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device shall be one of the following devices:

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater, as determined in accordance with the requirements of § 63.1282(d);

(B) Reduces the concentration of either TOC or a total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.1282(d)(4); or

(C) Operates at a minimum residence time of 0.5 second at a minimum temperature of 760°C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g., condenser) that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater as determined in accordance with the requirements of § 63.1282(d).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) Each control device used to comply with this subpart shall be operated at all times when material is placed in a unit vented to the control device except when maintenance or repair of a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section as follows:

(i) An owner or operator shall demonstrate, using either a performance test as specified in paragraph (d)(3)(iii) of this section or a design analysis as specified in paragraph (d)(3)(iv) of this section, the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel; or

(D) A boiler or process heater burning hazardous waste for which the owner or operator either has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in § 63.11(b).

(iii) For a performance test conducted to meet the requirements of paragraph (d)(3)(i) of this section, the owner or operator shall use the test methods and procedures specified in § 63.1282(d) or (e).

(iv) For a design analysis conducted to meet the requirements of paragraph (d)(3)(i) of this section, the design analysis shall meet the following requirements:

(A) The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable control device type as follows:

(*1*) For a thermal vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(*2*) For a catalytic vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(*3*) For a boiler or process heater, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(*4*) For a condenser, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(*5*) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed adsorber, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(*6*) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device such as a carbon canister, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(B) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (d)(3)(iii) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(4) The owner or operator shall operate each control device in accordance with the following requirements:

(i) The control device shall be operating at all times when gases, vapors, and fumes are vented from the unit or units through the closed-vent system to the control device.

(ii) For each control device monitored in accordance with the requirements of § 63.1283(d), the owner or operator shall operate the control device such that the actual value of each operating parameter required to be monitored in accordance with the requirements of § 63.1283(d)(3) is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the control device in accordance with the requirements of § 63.1283(d)(4).

(iii) Failure by the owner or operator to operate the control device in accordance with the requirements of paragraph (d)(4)(ii) of this section shall

constitute a violation of the applicable emission standard of this subpart.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) All carbon removed from the control device shall be managed in one of the following manners:

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 264, subpart X; or certified compliance with the interim status requirements of 40 CFR part 265, subpart P.

(B) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 264, subpart O.

(C) Burned in a boiler or industrial furnace for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H, or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

§ 63.1282 Test methods and compliance procedures.

(a) Determination of glycol dehydration unit flow rate or benzene emissions. The procedures of this paragraph shall be used by an owner or operator to determine flow rate or benzene emissions to meet the criteria for an exemption from control requirements under § 63.1274(b).

(1) The determination of actual flow rate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures flow to the glycol dehydration unit with an accuracy of plus or minus 2 percent.

(ii) The owner or operator shall document that the actual annual average flow rate of the dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day).

(2) The determination of benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(i) The owner or operator shall determine annual benzene emissions using the model GRI-GLYCalc™, Version 3.0 or higher. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit.

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18 in 40 CFR part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be multiplied by $1.1023\ E^{-03}$ to convert to tons per year.

(b) No detectable emissions test procedure.

(1) The procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid, and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a methane concentration of less than 10,000 parts per million by volume.

(5) The background level shall be determined according to the procedures in Method 21, 40 CFR part 60, appendix A.

(6) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 parts per million by volume. If the difference is less than 500 parts per million by volume, then no HAP emissions are detected.

(c) [Reserved]

(d) Control device performance test procedures. This paragraph applies to the performance testing of control devices. Owners or operators may elect to use the alternative procedures in paragraph (e) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the inlet and outlet of the control device.

(i) To determine compliance with the control device percentage of reduction requirement specified in § 63.1281(d)(1)(i)(A) or § 63.1281(d)(1)(ii)(A), sampling sites shall be located at the inlet of the control device as specified in paragraphs (d)(1)(i)(A) and (d)(1)(i)(B) of this section, and at the outlet of the control device.

(A) The control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air, or as a secondary fuel, into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total HAP or TOC concentration, as applicable, in all vent streams and primary and secondary fuels.

(ii) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the sampling site shall be located at the outlet of the device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with the control device percentage of reduction requirement specified in § 63.1281(d)(1)(i)(A) or § 63.1281(d)(1)(ii)(A), the owner or operator shall use Method 18 of 40 CFR part 60, appendix A of this chapter; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The following procedures shall be used to calculate the percentage of reduction:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(A) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj}=Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o=Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj}=Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2=Constant, $2.494\times10-6$ (parts per million)-1 (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20°C.

(B) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, of 40 CFR part 60, appendix A shall be summed using the equation in paragraph (d)(3)(ii)(A) of this section.

(C) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equation in paragraph (d)(3)(ii)(A) of this section.

(iii) The percentage of reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows

$$R_{cd} = \frac{E_i - E_o}{E_i}\times 100\%$$

Where:

R_{cd}=Control efficiency of control device, percent.

E_i=Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (d)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o=Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (d)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percentage of reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(4) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the owner or operator shall use Method 18, 40 CFR part 60, appendix A to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that has been validated according to Method 301, appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The TOC concentration or total HAP concentration shall be calculated according to paragraph (d)(4)(ii)(A) or (d)(4)(ii)(B) of this section.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x}\frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC}=Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji}=Concentration of sample components j of sample i, dry basis, parts per million by volume.

n=Number of components in the sample.

x=Number of samples in the sample run.

(B) The total HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (d)(4)(ii)(A) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(iii) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

C_c=TOC concentration of total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m=TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$=Concentration of oxygen, dry basis, percent by volume.

(e) As an alternative to the procedures in paragraph (d) of this section, an owner or operator may elect to use the procedures documented in the Gas Research Institute Report entitled, ''Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions,'' (GRI–95/0368.1).

§ 63.1283 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of § 63.1275.

(b) [Reserved]

(c) *Closed-vent system inspection and monitoring requirements.* (1) The owner or operator shall visually inspect and monitor for no detectable emissions each closed-vent system at the following times:

(i) On or before the date that the unit connected to the closed-vent system becomes subject to the provisions of this subpart;

(ii) At least once per year after the date that the closed-vent system is inspected in accordance with the requirements of paragraph (c)(1)(i) of this section; and

(iii) At other times as requested by the Administrator.

(2) To visually inspect a closed-vent system, the owner or operator shall view

the entire length of ductwork, piping and connections to covers and control devices for evidence of visible defects (such as holes in ductwork or piping and loose connections) that may affect the ability of the system to operate with no detectable emissions. A visible hole, gap, tear, or split in the closed-vent system is defined as a leak which shall be repaired in accordance with paragraph (c)(4) of this section.

(3) To monitor a closed-vent system for no detectable emissions, the owner or operator shall use Method 21, 40 CFR part 60, appendix A to test each closed-vent system joint, seam, or other connection. For the annual leak detection monitoring after the initial leak detection monitoring, the owner or operator is not required to monitor those closed-vent system components which continuously operate at a pressure below atmospheric pressure or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

(4) When a leak is detected by either of the methods specified in paragraph (c)(2) or (c)(3) of this section, the owner or operator shall make a first attempt at repairing the leak no later than 5 calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than 15 calendar days after the leak is detected.

(d) *Control device monitoring requirements.* (1) For each control device except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous monitoring system in accordance with the requirements of paragraphs (d)(3) through (d)(5) of this section that will allow a determination be made whether the control device is continuously achieving the applicable performance requirements of § 63.1281.

(2) An owner or operator is exempted from the monitoring requirements specified in paragraphs (d)(3) through (d)(5) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with primary fuel; or

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. The continuous recorder shall be a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minute or more frequent block average values. The owner or operator shall use any of the following continuous monitoring systems:

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system, an integrating regeneration stream flow monitoring device equipped with a continuous recorder, and a carbon bed temperature monitoring device equipped with a continuous recorder. The integrating regeneration stream flow monitoring device shall have an accuracy of ±10 percent and measure the total regeneration stream mass flow during the carbon bed regeneration cycle. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater and measure the carbon bed temperature both after regeneration and within 15 minutes of completing the cooling cycle, and over the duration of the carbon bed steaming cycle.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8 (f)(1) through (f)(5).

(4) For each operating parameter monitored in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281. Each minimum or maximum operating parameter value shall be established as follows:

(i) If the owner or operator conducts performance tests in accordance with the requirements of § 63.1281 to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281, then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis and manufacturer recommendations.

(ii) If the owner or operator uses control device design analysis in accordance with the requirements of § 63.1281(d)(3)(iv) to demonstrate that the control device achieves the applicable performance requirements

specified in § 63.1281(d)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and the control device manufacturer's recommendations.

(5) The owner or operator shall regularly inspect the data recorded by the continuous monitoring system to determine whether the control device is operating in accordance with the applicable requirements of § 63.1281(d).

§ 63.1284 Recordkeeping requirements.

(a) The recordkeeping provisions of subpart A of this part that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a facility subject to this subpart shall maintain the following records in accordance with the requirements of § 63.10(b)(1):

(1) Records specified in § 63.10(b)(2);

(2) Records specified in § 63.10(c) for each continuous monitoring system operated by the owner or operator in accordance with the requirements of § 63.1283(d).

(c) [Reserved]

(d) An owner or operator that is exempt from control requirements under § 63.1274(b) shall maintain a record of the design capacity (in terms of natural gas flow rate to the unit per day) of each glycol dehydration unit that is not controlled according to the requirements of § 63.1274(a).

§ 63.1285 Reporting requirements.

(a) The reporting provisions of subpart A of this part that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Each owner or operator of a facility subject to this subpart shall submit the following reports to the Administrator:

(1) An Initial Notification as described in § 63.9 (a) through (d), except that the notification required by § 63.9(b)(2) shall be submitted not later than one year after the effective date of this standard.

(2) A Notification of Performance Tests as specified in § 63.7(b), § 63.9(e), and § 63.9(g).

(3) A Notification of Compliance Status as specified in § 63.9(h).

(4) Performance test reports as specified in § 63.10(d)(2) and performance evaluation reports specified in § 63.10(e)(2). Separate performance evaluation reports as described in § 63.10(e)(2) are not required if the information is included in the summary report specified in paragraph (b)(6) of this section.

(5) Startup, shutdown, and malfunction reports, as specified in § 63.10(d)(5), shall be submitted as required. Separate startup, shutdown, or malfunction reports as described in § 63.10(d)(5)(i) are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(6) The excess emission and CMS performance report and summary report as specified in § 63.10(e)(3) shall be submitted on a semi-annual basis (i.e., once every 6-month period). The summary report shall be entitled ''Summary Report—Gaseous Excess Emissions and Continuous Monitoring System Performance.''

(7) The owner or operator shall meet the requirements specified in paragraph (b) of this section for any emission point or material that becomes subject to the standards in this subpart due to an increase in flow, concentration, or other parameters equal to or greater than the limits specified in this subpart.

(8) For each control device other than a flare used to meet the requirements of this subpart, the owner or operator shall submit the following information for each operating parameter required to be monitored in accordance with the requirements of § 63.1283(d):

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.1281(d). This explanation shall include any data and calculations used to develop the value and a description of why this value indicates that the control device is operating in accordance with the applicable requirements of § 63.1281(d)(1).

(9) Each owner or operator of a major source subject to this subpart that is not subject to the control requirements for glycol dehydration unit process vents in § 63.765 is exempt from all reporting requirements for major sources in this subpart.

(c) Each owner or operator of a facility subject to this subpart that is an area source is exempt from all reporting requirements in this subpart.

§ 63.1286 Delegation of authority. [Reserved]

§ 63.1287 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.1274 through 63.1281, the Administrator will publish a notice in the **Federal Register** permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that this means achieves equivalent emission reductions.

§ 63.1288 [Reserved]

§ 63.1289 [Reserved]

TABLE 1 TO SUBPART HHH—LIST OF HAZARDOUS AIR POLLUTANTS (HAP)

CAS No.[a]	Chemical name
75070	Acetaldehyde.
71432	Benzene (includes benzene in gasoline).
75150	Carbon disulfide.
463581	Carbonyl sulfide.
100414	Ethyl benzene.
107211	Ethylene glyco.
50000	Formaldehyde.
110543	n-Hexane.
91203	Naphthalene.
108883	Toluene.
540841	2,2,4-Trimethylpentane.
1330207	Xylenes (isomers and mixture).
95476	o-Xylene.
108383	m-Xylene.
106423	p-Xylenea.

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 OF SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS

General provisions reference	Applicable to subpart HHH	Comment
§ 63.1(a)(1)	Yes.	
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes.	
§ 63.1(a)(4)	Yes.	
§ 63.1(a)(5)	No.	Section reserved.
§ 63.1(a)(6)–(a)(8)	Yes.	
§ 63.1(a)(9)	No.	Section reserved.
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)–(a)(14)	Yes.	
§ 63.1(b)(1)	No.	Subpart HHH specifies applicability.
§ 63.1(b)(2)	Yes.	
§ 63.1(b)(3)	No.	
§ 63.1(c)(1)	No.	Subpart HHH specifies applicability.
§ 63.1(c)(2)	No.	
§ 63.1(c)(3)	No.	Section reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No.	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Except definition of ''major source'' is unique for this source category and there are additional definitions included in subpart HHH.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(a)(3)	Yes.	
§ 63.4(a)(4)	No.	Section reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)	Yes.	
§ 63.49(c)	Yes.	
§ 63.5(a)(1)	Yes.	
§ 63.5(a)(2)	No.	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No.	Section reserved.
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes.	
§ 63.5(b)(5)	Yes.	
§ 63.5(b)(6)	Yes.	
§ 63.5(c)	No.	Section reserved.
§ 63.5(d)(1)	Yes.	
§ 63.5(d)(2)	Yes.	
§ 63.5(d)(3)	Yes.	
§ 63.5(d)(4)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)(1)	Yes.	
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)	Yes.	
§ 63.6(b)(2)	Yes.	
§ 63.6(b)(3)	Yes.	
§ 63.6(b)(4)	Yes.	
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	No.	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)	Yes.	
§ 63.6(c)(2)	Yes.	
§ 63.6(c)(3)–(c)(4)	No.	Sections reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No.	Section reserved.
§ 63.6(e)	Yes.	
§ 63.6(f)(1)	Yes.	
§ 63.6(f)(2)	Yes.	
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No.	Subpart HHH does not require the use of a continuous emissions monitoring system.
§ 63.6(i)(1)–(i)(14)	Yes.	
§ 63.6(i)(15)	No.	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes.	

TABLE 2 OF SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS—Continued

General provisions reference	Applicable to subpart HHH	Comment
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	Yes.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No.	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	Yes.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	No..	
§ 63.8(c)(5)–(c)(8)	Yes.	
§ 63.8(d)	Yes.	
§ 63.8(e)	Yes.	
§ 63.8(f)(1)–(f)(5)	Yes.	
§ 63.8(f)(6)	No.	Subpart HHH does not require the use of a continuous emissions monitor.
§ 63.8(g)	No.	Subpart HHH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Sources are given one year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes.	
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	No.	
§ 63.9(g)	Yes.	
§ 63.9(h)(1)–(h)(3)	Yes.	
§ 63.9(h)(4)	No.	Section reserved.
§ 63.9(h)(5)–(h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes.	
§ 63.10(b)(2)	Yes.	
§ 63.10(b)(3)	No.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(c)(4)	No.	Sections reserved.
§ 63.10(c)(5)–(c)(8)	Yes.	
§ 63.10(c)(9)	No.	Section reserved.
§ 63.10(c)(10)–(c)(15)	Yes.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes.	
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	Yes	Subpart HHH requires major sources to submit startup, shutdown and malfunction report semi-annually.
§ 63.10(e)	Yes	Subpart HHH requires major sources to submit continuous monitoring system performance reports semi-annually.

TABLE 2 OF SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS—Continued

General provisions reference	Applicable to subpart HHH	Comment
§ 63.10(f)	Yes.	
§ 63.11(a)–(b)	Yes.	
§ 63.12(a)–(c)	Yes.	
§ 63.13(a)–(c)	Yes.	
§ 63.14(a)–(b)	Yes.	
§ 63.15(a)–(b)	Yes.	

[FR Doc. 98–2714 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–U

Friday
February 6, 1998

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1998; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1149]

Proposed Comprehensive Plan for Fiscal Year 1998

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of proposed program plan for fiscal year 1998.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Comprehensive Plan for fiscal year (FY) 1998.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments may be mailed to Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, Room 8413, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Eileen M. Garry, Acting Director, Information Dissemination Unit, at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), the Administrator of OJJDP is publishing for public comment a Proposed Comprehensive Plan describing the program activities that OJJDP proposes to carry out during FY 1998. The Proposed Comprehensive Plan includes activities authorized in Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. 5651–5665a, 5667, 5667a. Taking into consideration comments received on this Proposed Comprehensive Plan, the Administrator will develop and publish a Final Comprehensive Plan describing the particular program activities that OJJDP intends to fund during FY 1998, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

Notice of the official solicitation of grant or cooperative agreement applications under the Final Comprehensive Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Overview

After a decade of steady increases in juvenile crime and violence, the trend is being reversed. The United States has experienced a downturn in juvenile violent crime arrests for 2 straight years (3 years for murder arrests). Figures released in 1997 show that juvenile arrests for murder declined 14 percent 2 years in a row—and 3 percent the year before that. From 1995 to 1996, juvenile arrests for robbery declined 8 percent; for the previous year, they decreased 1 percent. The overall Violent Crime Index arrests of juveniles declined 6 percent in 1996, following a 3-percent drop in 1995.

The decreases in juvenile Violent Crime Index arrests must be kept in perspective, however. Even with the 2-year decline, the 1996 number was 60 percent above the 1987 level. In comparison, adult Violent Crime Index offense arrests rose 24 percent over the same period.

In the area of drug use violations, juveniles were involved in 14 percent of all drug arrests in 1996 (compared with 13 percent in 1995). However, arrests of juveniles for drug abuse violations increased 6 percent from 1995 to 1996, a smaller increase than the previous year's 18 percent. In addition, between 1992 and 1996, juvenile arrests for drug abuse violations increased 120 percent, compared with a 138-percent increase between 1991 and 1995.

Thus, in the second half of the 1990's, juvenile violent crime and drug use are still significantly higher than in the late 1980's but beginning to show signs of trending downward. The juvenile justice system needs to build on the positive momentum of these recent decreases by continuing to focus on programs and strategies that work. This requires a concerted effort on the part of Federal, State, and local government, in partnership with private organizations and community agencies, to ensure that available resources are used in a way that maximizes their impact; decreases juvenile crime, violence, and victimization; and increases community safety.

Federal leadership in responding to the problems confronting the Nation's juvenile justice system is vested in OJJDP. Established in 1974 by the JJDP Act, OJJDP is the Federal agency responsible for providing a comprehensive, coordinated approach to preventing and controlling juvenile crime and improving the juvenile justice system. OJJDP administers State Formula Grants, State Challenge Grants, and the Title V Community Prevention Grants programs in States and territories; funds gang and mentoring programs under Parts D and G of the JJDP Act; funds numerous projects through its Special Emphasis Discretionary Grant Program and its National Institute for Juvenile Justice and Delinquency Prevention; and coordinates Federal activities related to juvenile justice and delinquency prevention.

OJJDP also serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention, coordinates the Concentration of Federal Efforts Program, and administers both the Title IV Missing and Exploited Children's Program and programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. § 13001 *et seq.*

In the FY 1998 Appropriations Act, Congress provided funding for two new OJJDP programs. These are not funded under Parts C and D of Title II of the JJDP Act, which are the focus of this Proposed Program Plan. However, mention of these new programs here, along with an additional program that OJJDP will administer, may help to alert those who work in the juvenile justice field to the existence of these new programs. Recognizing that, ''while crime is on the decline in certain parts of America, a dangerous precursor to crime, teenage drug use, is on the rise and may soon reach a 20-year high,'' Congress provided $5 million in funds for the development, demonstration, and testing of programs designed ''to reduce drug use among juveniles'' and ''to increase the perception among children and youth that drug use is risky, harmful, and unattractive.'' Funding for the drug prevention program is discretionary, and the Appropriations Act directs OJJDP to submit a program plan for the drug prevention program by February 1, 1998. Twenty-five million dollars in funds were also provided for an underage drinking program. Much of the funding for the underage drinking program will be made available to the States and the District of Columbia through formula grants of $360,000 each (total $18.36 million), with $5 million in discretionary funding, and $1.64 million for training and technical assistance to support the program. OJJDP will also administer the Juvenile Accountability Incentive Block Grants program authorized in the FY 1998 Appropriations Act. Of the $250 million available under this new block grant program, 3 percent is available for research, evaluation, and demonstration activities related to the program and 2 percent is available for related training and technical assistance activities.

Further information on these programs will be provided to the field in the near future.

Cognizant of the trends in juvenile crime and violence and of its responsibilities and mission, OJJDP has developed a Proposed Program Plan for FY 1998 for activities authorized under Parts C and D of Title II of the JJDP Act, as described below.

Fiscal Year 1998 Program Planning Activities

The OJJDP program planning process for FY 1998 is being coordinated with the Assistant Attorney General, Office of Justice Programs (OJP), and the four other OJP program bureaus: the Bureau of Justice Assistance (BJA), the Bureau of Justice Statistics (BJS), the National Institute of Justice (NIJ), and the Office for Victims of Crime (OVC). The program planning process involves the following steps:

- Internal review of existing programs by OJJDP staff.
- Internal review of proposed programs by OJP bureaus and Department of Justice components.
- Review of information and data from OJJDP grantees and contractors.
- Review of information contained in State comprehensive plans.
- Review of comments made by youth service providers, juvenile justice practitioners, and researchers to provide OJJDP with input in proposed new program areas.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed on the following pages continuation projects currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 1998, either within an existing project period or through an extension for an additional project period. A grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and fund availability.

The only projects described in this Proposed Program Plan are those that are receiving Part C or Part D FY 1998 continuation funding and programs that OJJDP is considering for new awards in FY 1998.

Consideration for continuation funding for an additional project period for previously funded discretionary grant programs will be based upon several factors, including the following:

- The extent to which the project responds to the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 1998 program priorities.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with Section 262(d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. § 5665a, the competitive process for the award of Part C funds shall not be required if the Administrator makes a written determination waiving the competitive process:

1. With respect to programs to be carried out in areas in which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. § 5121 *et seq.* that a major disaster or emergency exists, or
2. With respect to a particular program described in Part C that is uniquely qualified.

Program Goals

OJJDP seeks to focus its assistance on the development and implementation of programs with the greatest potential for reducing juvenile delinquency and improving the juvenile justice system by establishing partnerships with State and local governments, Native American and Native Alaskan jurisdictions, and public and private agencies and organizations. To that end, OJJDP has set three goals that constitute the major elements of a sound policy that assures public safety and security while establishing effective juvenile justice and delinquency prevention programs:

- To promote delinquency prevention and early intervention efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. While removing serious and violent juvenile offenders from the street serves to protect the public, long-term solutions lie primarily in taking aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.
- To improve the juvenile justice system and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
- To preserve the public safety in a manner that serves the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders.

Underlying each of the three goals is the overarching premise that their achievement is vital to protecting the long-term safety of the public from juvenile delinquency and violence. The following discussion addresses these three broad goals.

Delinquency Prevention and Early Intervention

A primary goal of OJJDP is to identify and promote programs that prevent or reduce the occurrence of juvenile offenses, both criminal and noncriminal, and to intervene immediately and effectively when delinquent or status offense conduct first occurs. A sound policy for juvenile delinquency prevention seeks to strengthen the most powerful contributing factor to socially acceptable behavior—a productive place for young people in a law-abiding society. Delinquency prevention programs can operate on a broad scale, providing for positive youth development, or can target juveniles identified as being at high risk for delinquency with programs designed to reduce future juvenile offending. OJJDP prevention programs take a risk and protective factor-based delinquency prevention approach based on public health and social development models.

Early interventions are designed to provide services to juveniles whose noncriminal misbehavior indicates that they are on a delinquent pathway or to first-time nonviolent delinquent offenders or nonserious repeat offenders who do not respond to initial system intervention. These interventions are generally nonpunitive but serve to hold a juvenile accountable while providing services tailored to the individual needs of the juvenile and the juvenile's family. They are designed to both deter future misconduct and reduce the negative or enhance the positive factors present in a child's life.

Improvement of the Juvenile Justice System

A second goal of OJJDP is to promote improvements in the juvenile justice

system and facilitate the most effective allocation of system resources. This goal is necessary for holding juveniles who commit crimes accountable for their conduct, particularly serious and violent offenders who sometimes slip through the cracks of the system or are inappropriately diverted. Activities to support this goal include assisting law enforcement officers in their efforts to prevent and control delinquency and the victimization of children through community policing programs and coordination and collaboration with other system components and with child caring systems. Meeting this goal involves helping juvenile and family courts, and the prosecutors and public defenders who practice in those courts, to provide a system of justice that maintains due process protections. It requires trying innovative programs and carefully evaluating those programs to determine what works and what does not work. It includes a commitment to involving crime victims in the juvenile justice system and ensuring that their rights are considered. In this regard, OJJDP will continue to work closely with the Office for Victims of Crime to further cooperative programming, including the provision of services to juveniles who are crime victims or the provision of victims services that improve the operation of the juvenile justice system.

Improving the juvenile justice system also calls for strengthening its juvenile detention and corrections capacity and intensifying efforts to use juvenile detention and correctional facilities in appropriate circumstances and under conditions that maximize public safety, while at the same time providing effective rehabilitation services. It requires encouraging States to carefully consider the use of expanded transfer authority that sends the most serious, violent, and intractable juvenile offenders to the criminal justice system, while preserving individualized justice. It necessitates conducting research and gathering statistical information in order to understand how the juvenile justice system works in serving children and families. Finally, the system can only be improved if information and knowledge are communicated, understood, and applied for the purpose of juvenile justice system improvement.

Corrections, Detention, and Community-Based Alternatives

A third OJJDP goal is to maintain the public safety through a balanced use of secure detention and corrections and community-based alternatives. This involves identifying and promoting effective community-based programs and services for juveniles who have formal contact with the juvenile justice system and emphasizing options that maintain the safety of the public, are appropriately restrictive, and promote and preserve positive ties with the child's family, school, and community. Communities cannot afford to place responsibility for juvenile delinquency entirely on publicly operated juvenile justice system programs. A sound policy for combating juvenile delinquency and reducing the threat of youth violence makes maximum use of a full range of public and private programs and services, most of which operate in the juvenile's home community, including those provided by the health and mental health, child welfare, social service, and educational systems.

Coordination of the development of community-based programs and services with the development and use of a secure detention and correctional system capability for those juveniles who require a secure option is cost effective and will protect the public, reduce facility crowding, and result in better services for both institutionalized juveniles and those who can be served while remaining in their community environment.

In pursuing these three broad goals, OJJDP divides its programs into four broad categories: public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse, neglect, and dependency courts. A fifth category, overarching programs, contains programs that have significant elements common to more than one category. Following the introductory section below, the programs that OJJDP proposes to fund in FY 1998 are listed and summarized within these five categories.

Introduction to Fiscal Year 1998 Program Plan

An effective juvenile justice system must implement a sound comprehensive strategy and must identify and support programs that work to further the objectives of the strategy. These objectives include holding the juvenile offender accountable; enabling the juvenile to become a capable, productive, and responsible citizen; and ensuring the safety of the community.

For juveniles who come to the attention of police, juvenile courts, or social service agencies, a strong juvenile justice system must assess the danger they pose, determine what can help put them back on the right track, deliver appropriate treatment, and stay with them when they return to the community. When necessary, a strong juvenile justice system also must appropriately identify those serious, violent, and chronic juveniles offenders who are beyond its reach and ensure their criminal prosecution and incapacitation.

Research has shown that what works to reduce juvenile crime and violence includes prevention programs that start with the earliest stages of life: good prenatal care, home visitation for newborns at risk of abuse and neglect, steps to strengthen parenting skills, and initiatives to prepare children for school. These programs can build the foundation for law-abiding lives for children and interrupt the cycle of violence that can turn abused or neglected children into delinquents.

Prevention programs work for older children, too: opportunities for youth after school and on weekends, such as Boys and Girls Clubs and mentoring programs, reduce juvenile alcohol and drug use, improve school performance, and prevent youth from getting involved in crime and violent behavior.

Another focal point for juvenile justice efforts is the community. Without healthy communities, young people cannot thrive. The key leaders in the community, including representatives from the juvenile justice, health and mental health, schools, law enforcement, social services, and other systems, as well as leaders from the private sector, must be jointly engaged in the planning, development, and operation of the juvenile justice system. Attempts to improve the juvenile justice system must be part of a broad, comprehensive, communitywide effort—both at the leadership and grassroots level—to eliminate factors that place juveniles at risk of delinquency and victimization, enhance factors that protect them from engaging in delinquent behavior, and use the full range of resources and programs within the community to meet the varying needs of juveniles. It is also important to provide increased public access to the system to ensure an appropriate role for victims, a greater understanding of how the system operates, and a higher level of system accountability to the public.

The recent decreases in all measures of juvenile violence known to law enforcement (number of arrests, arrest rates, and the percentage of violent crimes cleared by juvenile arrests) should encourage legislators, juvenile justice policymakers and practitioners, and all concerned citizens to support ongoing efforts to address juvenile crime and violence through a comprehensive approach.

Three documents published during the past 5 years provide the framework

for a comprehensive approach to an improved, more effective juvenile justice system. OJJDP's *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* (1993) *and Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* (1995) were followed in 1996 by the Coordinating Council on Juvenile Justice and Delinquency Prevention's *Combating Violence and Delinquency: The National Juvenile Justice Action Plan*. The first of these publications defined the elements of the comprehensive strategy. The second provided States and communities with a more detailed explanation of what would constitute the elements of a comprehensive strategy, including strategic and programmatic information on risk and protective factor-based prevention and a system of graduated sanctions. The third prioritized Federal, State, and local activities and resources under eight critical objectives that are central to reducing and preventing juvenile violence, delinquency, and victimization.

The OJJDP FY 1998 Proposed Program Plan is rooted in the principles of the *Comprehensive Strategy* and the objectives of the *Action Plan*. Like the OJJDP Program Plans for FY's 1996 and 1997, the FY 1998 Proposed Program Plan supports a balanced approach to aggressively addressing juvenile delinquency and violence through establishing graduated sanctions, improving the juvenile justice system's ability to respond to juvenile offending, and preventing the onset of delinquency. The Proposed Program Plan, therefore, recognizes the need to ensure public safety and support children's development into healthy, productive citizens through a range of prevention, early intervention, and graduated sanctions programs.

Proposed new program areas were identified for FY 1998 through a process of engaging OJJDP staff, other Federal agencies, and juvenile justice practitioners in an examination of existing programs, research findings, and the needs of the field. In a departure from past practice, OJJDP is presenting for public comment more proposed programs than it expects to be able to fund with the resources available. It is OJJDP's intent to stimulate discussion of the best use of its FY 1998 discretionary funding and to seek guidance from the field as to which programs, among the many described here, would most effectively advance the goals of promoting delinquency prevention and early intervention, improving the juvenile justice system, and preserving the public safety.

OJJDP is considering providing funding for a wide variety of new programs, including technical assistance to promote teen court programs, training and technical assistance coordination for the SafeFutures initiative, and training and technical assistance for the Blueprints for Violence Prevention project and for a school safety program. New proposals also involve OJJDP collaboration with other agencies to address problems such as truancy, develop arts programs directed toward at-risk youth and youth held in juvenile detention centers, support the planning and development of systems of care for Native American and Alaskan Native youth with mental health and substance abuse needs, develop and implement a teambuilding project designed to facilitate coordination and foster innovative solutions to problems facing juvenile courts, and support demonstration projects designed to intervene early with students with learning disabilities to prevent delinquency and also to prevent recidivism by those students in correctional settings. In addition, OJJDP is considering providing funding for initial planning and implementation of a Juvenile Defender Center, coordination of youth-related volunteer services, support for programs designed to build infrastructure for programming for female juvenile offenders and teen mothers, and support for additional work in the area of disproportionate minority confinement in secure juvenile facilities and other institutions. Some of the proposed new program areas for FY 1998 are specific while others are more general, as can be seen in the program descriptions that appear later in the Program Plan.

In addition, OJJDP has identified for FY 1998 funding a range of research and evaluation projects designed to expand knowledge about juvenile offenders; the effectiveness of prevention, intervention, and treatment programs; and the operation of the juvenile justice system. New evaluation initiatives that may be undertaken include the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders; the Boys and Girls Clubs of America's TeenSupreme Career Preparation Initiative; analysis and interpretation of juvenile justice-related data from nontraditional sources; evaluation capacity building in States; and field-initiated research and evaluation. Combined with new OJJDP programs and programs being continued in FY 1998, these new demonstration and evaluation programs would form a continuum of programming that supports the objectives of the *Action Plan* and mirrors the foundation and framework of the *Comprehensive Strategy*.

OJJDP's continuation activities and the new FY 1998 programs are at the heart of OJJDP's categorical funding efforts. For example, while focusing on new areas of programming such as the Juvenile Defender Center and the role of the arts for juveniles in detention centers and for at-risk youth, continuing to offer training seminars in the Comprehensive Strategy, and looking to the SafeFutures program to implement a continuum of care system, OJJDP will be supporting programs that reduce the likelihood of juvenile involvement in hate crimes, reduce juvenile gun violence, promote positive approaches to conflict resolution, and explore the mental health needs of juveniles. Together, these and other activities provide a comprehensive approach to prevention and early intervention programs while enhancing the juvenile justice system's capacity to provide immediate and appropriate accountability and treatment for juvenile offenders, including those with special treatment needs.

OJJDP's Part D Gang Program is considering development of a rural gang prevention and intervention program and will continue to support a range of comprehensive prevention, intervention, and suppression activities at the local level, evaluate those activities, and inform communities about the nature and extent of gang activities and effective and innovative programs through OJJDP's National Youth Gang Center. Similarly, activities related to the identification of school-based gang programs and the evaluation of the Boys and Girls Clubs gang outreach effort, along with an evaluation of selected youth gun violence reduction programs, will complement existing law enforcement and prosecutorial training programs by supporting and informing grassroots community organizations' efforts to address juvenile gangs and juvenile access to, carriage of, and use of guns. This programming builds on OJJDP's youth-focused community policing, mentoring, and conflict resolution initiatives and programming, including the work of the Congress of National Black Churches in supporting local churches to address the prevention of drug abuse, youth violence, and hate crime.

In support of the need to break the cycle of violence, OJJDP's SafeKids/Safe Streets demonstration program, currently being implemented in

partnership with other OJP offices and bureaus, will improve linkages between the dependency and criminal court systems, child welfare and social service providers, and family strengthening programs and will complement ongoing support of Court Appointed Special Advocates, Child Advocacy Centers, and prosecutor and judicial training in the dependency field, funded under the Victims of Child Abuse Act of 1990, as amended.

The Plan's research and evaluation programming will support many of the above activities by filling in critical gaps in knowledge about the level and seriousness of juvenile crime and victimization, its causes and correlates, and effective programs in preventing delinquency and violence. At the same time, OJJDP's research efforts will also be geared toward efforts that monitor and evaluate the ways juveniles are treated by the juvenile and criminal justice systems, particularly in relation to juvenile violence and its impact.

As described below, OJJDP is also utilizing its national perspective to disseminate information to those at the grassroots level: practitioners, policymakers, community leaders, and service providers who are directly responsible for planning and implementing policies and programs that impact juvenile crime and violence. An additional OJJDP goal is to help practitioners and policymakers translate this information into action through its training and technical assistance providers as part of its mission to provide meaningful assistance for the replication of successful and promising strategies and programs.

OJJDP will continue to fund longitudinal research on the causes and correlates of delinquency. Even more important, however, OJJDP will regularly share the findings from this research with the field through OJJDP's publications, Home Page on the World Wide Web, and JuvJust (an electronic newsletter); utilize state-of-the-art technology to provide the field with an interactive CD-ROM on promising and effective programs designed to prevent delinquency and reduce recidivism; air national satellite teleconferences on key topics of relevance to practitioners; and publish new reports and documents on timely topics. Some examples of these publication topics include youth action to prevent delinquency; family strengthening; juvenile substance abuse (prevention, intervention, and testing); balanced and restorative justice; developmental pathways in delinquent behavior, gang migration, capacity building for substance abuse treatment, youth gangs, restitution programs, school safety, and conditions of confinement.

The various contracts, grants, cooperative agreements, and interagency fund transfers described in the Program Plan form a continuum of activity designed to address youth violence, delinquency, and victimization. In isolation, this programming can do little. However, the emphasis of OJJDP's programming is on collaboration. It is through collaboration that Federal, State, and local agencies; Native American tribes; national organizations; private philanthropies; the corporate and business sector; health, mental health, and social service agencies; schools; youth; families; and clergy can come together to form partnerships and leverage additional resources, identify needs and priorities, and implement innovative strategies. In the past few years, the combined efforts of these varied groups have brought about the beginnings of change in the prevalence of juvenile crime, violence, and victimization. Now is the time to strengthen old partnerships and forge new ones to develop support for a long-term, comprehensive approach to a more effective juvenile justice system.

Fiscal Year 1998 Programs

The following are brief summaries of each of the new and continuation programs scheduled to receive funding in FY 1998. As indicated above, the program categories are public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse and neglect and dependency courts. However, because many programs have significant elements of more than one of these program categories or generally support all of OJJDP's programs, they are listed in an initial program category, called overarching programs. The specific program priorities within each category are subject to change with regard to their priority status, sites for implementation, and other descriptive data and information based on grantee performance, application quality, fund availability, and other factors.

A number of OJJDP programs have been identified for funding consideration by Congress with regard to the grantee(s), the amount of funds, or both. These programs, which are listed below, are not included in the program descriptions that follow.

National Council of Juvenile and Family Court Judges
Teens, Crime, and the Community
Parents Anonymous, Inc.
Juvenile Offender Transition Program
Suffolk University Center for Juvenile Justice
Center for Crimes and Violence Against Children
Crow Creek Alcohol and Drug Program
Metro Denver Gang Coalition

In addition, OJJDP has been directed to examine each of the following proposals, provide grants if warranted, and report to the Committees on Appropriations of both the House and the Senate on its intention for each proposal:

Coalition for Juvenile Justice
The Hamilton Fish National Institute on School/Community Violence
Low Country Children's Center
Vermont Department of Social and Rehabilitative Services
Grassroots Drug Prevention Program
Dona Ana Camp
Center for Prevention of Juvenile Crime and Delinquency at Prairie View University
Project O.A.S.I.S.
KidsPeace—The National Centers for Kids in Crisis, North America
Consortium on Children, Families, and Law
New Mexico Prevention Project
No Hope in Dope Program
Study of the Link Between Child Abuse and Criminal Behavior in Alaska
Gainesville Juvenile Assessment Center
Lincoln Council on Alcohol and Drugs
Hill Renaissance Partnership
National Training and Information Center
Culinary Arts Training Program for At-Risk Youth
Women of Vision Program for Youthful Female Offenders
Violence Institute of New Jersey
Delancy Street Foundation
Law-Related Education

Fiscal Year 1998 Program Listing

Overarching

SafeFutures: Partnerships To Reduce Youth Violence and Delinquency
Evaluation of SafeFutures
Program of Research on the Causes and Correlates of Delinquency
OJJDP Management Evaluation Contract
Juvenile Justice Statistics and Systems Development
Census of Juveniles in Residential Placement
National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center
Technical Assistance for State Legislatures
Telecommunications Assistance
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Juvenile Justice Clearinghouse

Insular Area Support
Community Assessment Centers (CAC's)
Training and Technical Assistance Coordination for SafeFutures Initiative

Public Safety and Law Enforcement

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Targeted Outreach With A Gang Prevention and Intervention Component (Boys and Girls Clubs)
National Youth Gang Center
Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program
The Chicago Project for Violence Prevention
Safe Start—Child Development-Community-Oriented Policing (CD–CP)
Law Enforcement Training and Technical Assistance Program
Partnerships To Reduce Juvenile Gun Violence
Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Technical Assistance and Training
Rural Youth Gang Problems—Adapting OJJDP's Comprehensive Approach

Delinquency Prevention and Intervention

Youth-Centered Conflict Resolution
Communities in Schools—Federal Interagency Partnership
The Congress of National Black Churches: National Anti-Drug Abuse/Violence Campaign (NADVC)
Risk Reduction Via Promotion of Youth Development
Training and Technical Assistance for Family Strengthening Programs
Hate Crime
Strengthening Services for Chemically Involved Children, Youth, and Families
Diffusion of State Risk-and Protective-Factor Focused Prevention
Multisite, Multimodal Treatment Study of Children With ADHD
Evaluation of the Juvenile Mentoring Program
Truancy Reduction
Arts and At-Risk Youth
Community Volunteer Coordinator Program
Learning Disabilities Among Juveniles At Risk of Delinquency or in the Juvenile Justice System
Advertising Campaign—Investing in Youth for a Safer Future

Strengthening the Juvenile Justice System

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Balanced and Restorative Justice Project (BARJ)
Training and Technical Assistance Program To Promote Gender-Specific Programming for Female Juvenile Offenders
Juvenile Transfers to Criminal Court Studies
Replication and Extension of Fagan Transfer Study
The Juvenile Justice Prosecution Unit
Due Process Advocacy Program Development
Quantum Opportunities Program (QOP) Evaluation
Intensive Community-Based Aftercare Demonstration and Technical Assistance Program
Evaluation of the Intensive Community-Based Aftercare Program
Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (The Deborah Ann Wysinger Memorial Program)
Juvenile Probation Survey Research
Training for Juvenile Corrections and Detention Management Staff
Training for Line Staff in Juvenile Detention and Corrections
Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding
National Program Directory
Juvenile Sex Offender Typology
Interagency Programs on Mental Health and Juvenile Justice
Juvenile Residential Facility Census
The National Longitudinal Survey of Youth 97
National Academy of Sciences Study of Juvenile Justice
TeenSupreme Career Preparation Initiative
Technical Assistance to Native Americans
Training and Technical Assistance To Promote Teen Court Programs
Training and Technical Assistance Coordination for SafeFutures Initiative
School Safety
Disproportionate Minority Confinement
Arts Programs in Juvenile Detention Centers
''Circles of Care''—A Program To Develop Strategies To Serve Native American Youth With Mental Health and Substance Abuse Needs
Juvenile Defender Training, Technical Assistance, and Resource Center
Gender-Specific Programming for Female Juvenile Offenders
Evaluation Capacity Building
Field-Initiated Research
Field-Initiated Evaluation
Analysis of Juvenile Justice Data
Evaluation of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Blueprints for Violence Prevention: Training and Technical Assistance
Teambuilding Project for Courts

Child Abuse and Neglect and Dependency Courts

Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency
National Evaluation of the Safe Kids/Safe Streets Program
Secondary Analysis of Childhood Victimization
Evaluation of Nurse Home Visitation in Weed and Seed Sites

Overarching

SafeFutures: Partnerships To Reduce Youth Violence and Delinquency

OJJDP is awarding grants of up to $1.4 million annually to each of six communities for a 5-year project period that began in FY 1995, to assist in implementing comprehensive community programs designed to reduce youth violence and delinquency. Boston, Massachusetts; Contra Costa County, California; Seattle, Washington; St. Louis, Missouri; Imperial County, California (rural site); and Fort Belknap, Montana (tribal site) were competitively selected to receive awards under the SafeFutures program on the basis of their substantial planning and progress in community assessment and strategic planning to address delinquency.

SafeFutures seeks to prevent and control youth crime and victimization through the creation of a continuum of care in communities. This continuum enables communities to be responsive to the needs of youth at critical stages of their development through providing an appropriate range of prevention, intervention, treatment, and sanctions programs.

The goals of SafeFutures are (1): To prevent and control juvenile violence and delinquency in targeted communities by reducing risk factors and increasing protective factors for delinquency; providing a continuum of services for juveniles at risk of delinquency, including appropriate immediate interventions for juvenile offenders; and developing a full range of graduated sanctions designed to hold delinquent youth accountable to the victim and the community, ensure community safety, and provide appropriate treatment and rehabilitation

services; (2) to develop a more efficient, effective, and timely service delivery system for at-risk and delinquent juveniles and their families that is capable of responding to their needs at any point of entry into the juvenile justice system; (3) to build the community's capacity to institutionalize and sustain the continuum by expanding and diversifying sources of funding; and (4) to determine the success of program implementation and the outcomes achieved, including whether a comprehensive program involving community-based efforts and program resources concentrated on providing a continuum of care has succeeded in preventing or reducing juvenile violence and delinquency.

Each of the six sites will continue to provide a set of services that builds on community strengths and existing services and fills in gaps within their existing continuum. These services include family strengthening; after school activities; mentoring; treatment alternatives for juvenile female offenders; mental health services; day treatment; graduated sanctions for serious, violent, and chronic juvenile offenders; and gang prevention, intervention, and suppression.

A national evaluation is being conducted by the Urban Institute to determine the success of the initiative and track lessons learned at each of the six sites. OJJDP has also committed a cadre of training and technical assistance (TTA) resources to SafeFutures through a full-time TTA coordinator for SafeFutures and a host of partner organizations committed to assisting SafeFutures sites. The TTA coordinator also assists the communities in brokering and leveraging additional TTA resources. In addition, the U.S. Department of Housing and Urban Development has provided interagency support of $100,000 for training and technical assistance targeted to violence and delinquency prevention in public housing areas of SafeFutures sites. Thus, operations, evaluation, and TTA have been organized together to form a joint team at the national level to support local site efforts.

SafeFutures activities will be carried out by the six current grantees. No additional applications will be solicited in FY 1998.

Evaluation of SafeFutures

In FY 1995, OJJDP funded six communities under the SafeFutures: Partnerships To Reduce Youth Violence and Delinquency program. The program sites are Boston, Massachusetts; Contra Costa County, California; Fort Belknap Indian Community, Harlem, Montana; Imperial County, California; Seattle, Washington; St. Louis, Missouri. The SafeFutures Program provides support for a comprehensive prevention, intervention, and treatment program to meet the needs of at-risk juveniles and their families. In total, up to $8.4 million is being made available for annual awards over a 5-year project period to support the efforts of these jurisdictions to enhance existing partnerships, integrate juvenile justice and social services, and provide a continuum of care that is designed to reduce the number of serious, violent, and chronic juvenile offenders.

The Urban Institute received a competitive 3-year cooperative agreement award with FY 1995 funds to conduct Phase I of the national evaluation of the SafeFutures program. OJJDP would consider 2 years of additional funding for Phase II. The evaluation addresses the program implementation process and measures performance outcomes across the six sites. The process evaluation focuses primarily on the development and implementation of a strategic plan designed to establish a continuum of care and integrated services for young people in high-risk communities. The evaluation will identify obstacles and key factors contributing to the successful implementation of the SafeFutures program. The evaluator is responsible for developing a cross-site report documenting the process of program implementation for use by other funding agencies or communities that want to develop and implement a comprehensive community-based strategy to address serious, violent, and chronic delinquency.

In FY 1996, the Urban Institute developed a logic model that links program activities and outputs to desired intermediate and long-term outcomes. Their evaluator also held a cross-site cluster meeting and conducted site visits at each of the six SafeFutures sites.

In FY 1997, in addition to continuing its onsite monitoring, the Urban Institute, in collaboration with the OJJDP SafeFutures program management team, developed the national evaluation plan and introduced it to the sites at the cluster meeting on information technology held in Oakland, CA, in September 1997.

In FY 1998, the Urban Institute will continue the process evaluation and will conduct interviews with key stakeholders, service providers, and youth in order to assess the extent to which a community and its policy board have mobilized to implement a continuum of care and develop an integrated system of services over the course of SafeFutures program implementation. The research team will also complete the development of performance measures to be used by all sites to monitor the outcomes for targeted populations within and across sites. They will compile and process the results of the performance outcomes from the sites and provide feedback to both the sites and to OJJDP. Beginning in FY 1998, the national evaluator will design and conduct sample surveys of youth in the community to assist in monitoring community-level changes in the prevalence and incidence of certain risk factors as well as developmental and community assets on levels of delinquency and violence in the targeted community. In addition, longitudinal samples of youth and their families will be followed over time to observe the extent to which multiple needs are identified and responded to over the course of the SafeFutures program interventions.

The evaluation will be implemented by the current grantee, the Urban Institute. No additional applications will be solicited in FY 1998.

Program of Research on the Causes and Correlates of Delinquency

Three project sites participate in the Program of Research on the Causes and Correlates of Delinquency (Causes and Correlates): The University of Colorado at Boulder, the University of Pittsburgh, and the University at Albany, State University of New York. Results from this longitudinal study have been used extensively in the field of juvenile justice and have contributed significantly to the development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and other OJJDP program initiatives.

OJJDP began funding this program in 1986 and has invested approximately $10.3 million to date. Currently, OJJDP is supporting site data analyses under three-year project period grants awarded to each site in FY 1996. The Causes and Correlates program has addressed a variety of issues related to juvenile violence and delinquency. These include developing and testing causal models for chronic violent offending and examining interrelationships among gang involvement, drug selling, and gun ownership/use. To date, the program has produced a massive amount of information on the causes and correlates of delinquent behavior.

Although there is great commonality across the Causes and Correlates project sites, each has unique design features. Additionally, each project has

disseminated the results of its research through a broad range of publications, reports, and presentations.

With FY 1996 funding, each site of the Causes and Correlates program was provided funds to further analyze the longitudinal data. Among the numerous analyses conducted were risk factors for teenage fatherhood, patterns of illegal gun carrying among young urban males, and factors associated with early sexual activity among urban adolescents. Two publications were developed as part of the newly launched Youth Development Series of OJJDP Bulletins.

In FY 1997, the sites continued both their collaborative research efforts and site-specific research. The cross site analysis was on the early onset and co-occurrence of persistent serious offending. Site specific analyses were produced on victimization, over time changes in delinquency and drug use, impact of family changes on adolescent development, and neighborhood, individual, and social risk factors for serious juvenile offending.

In FY 1998, at least one major cross site analysis will be undertaken as well as three site specific analyses per study site.

This program will be implemented by the current grantees: Institute of Behavioral Science, University of Colorado at Boulder; Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. No additional applications will be solicited in FY 1998.

OJJDP Management Evaluation Contract

OJJDP's Management Evaluation Contract was competitively awarded in 1995 for a period of 3 years. Its purpose is to provide OJJDP with an expert resource capable of performing independent program evaluations and assisting the Office in implementing evaluation activities. The management evaluation contract currently provides the following types of assistance to OJJDP: (1) Assists OJJDP staff in the determination of evaluation needs of programs, program areas, or projects to assist the agency in determining when to invest its evaluation resources; (2) develops evaluation designs that OJJDP can use in defining requirements for a grant or contract to implement the evaluation; (3) provides technical assistance with regard to evaluation techniques to other jurisdictions involved in the evaluation of programs to prevent and treat juvenile delinquency; (4) responds to the needs of OJJDP by providing evaluations based on available data or data that can be readily developed to support OJJDP decisionmaking under whatever schedule is required by the decisionmaking process. Evaluations under this contract are program evaluations, that is, evaluations of either individual grants or con tracts or groups of grants or contracts that are designed to determine the effectiveness and efficiency of the program; (5) conduct a full-scale evaluation research project; and (6) provide training to OJJDP program managers and other staff on evaluation-related topics such as the different kinds of evaluation data and their uses, planning for program or project information collection and evaluation, and the role of evaluation in the agency planning process.

Under this contract, evaluations may be conducted on OJJDP-funded action programs, including demonstrations, tests, training, and technical assistance programs and other programs, not funded by OJJDP, designed to prevent and treat juvenile delinquency. Evaluations are carried out in accordance with work plans prepared by the contractor and approved by OJJDP. Because the evaluations vary in terms of program complexity, availability of data, and purpose of the evaluation, the time and cost of each varies. Each evaluation is defined by OJJDP and costs, method, and time are determined through negotiations between OJJDP and the contractor. Because the purpose of many evaluations is to inform management decisions, the completion of an evaluation and submission of a report may be required in a specific and, often, short time period.

This contract will be implemented by the current contractor, Caliber Associates. A new competitive contract solicitation will be issued during FY 1998, and a new contract awarded in FY 1999.

Juvenile Justice Statistics and Systems Development

The Juvenile Justice Statistics and Systems Development (SSD) program was competitively awarded in FY 1990 to the National Center for Juvenile Justice (NCJJ) to improve national, State, and local statistics on juveniles as victims and offenders. Over the last seven years, through continuation funding, the project has focused on three major tasks: (1) assessing how current information needs are being met with existing data collection efforts and recommending options for improving national level statistics; (2) analyzing data and disseminating information gathered from existing Federal statistical series and national studies; and (3) providing training and technical assistance for local agencies in developing or enhancing management information systems.

Under the second task, OJJDP released the seminal analysis *Juvenile Offenders and Victims: A National Report* in September 1995, *Juvenile Offenders and Victims: 1996 Update on Violence* in March 1996, and *Juvenile Offenders and Victims: 1997 Update on Violence* in October 1997. A training curriculum, *Improving Information for Rational Decisionmaking in Juvenile Justice*, was drafted for pilot testing, and future documents will be produced based on this effort.

In FY 1998, NCJJ will: (1) complete a long-term plan for improving national statistics on juveniles as victims and offenders, including constructing core data elements for a national reporting program for juveniles waived or transferred to criminal court; (2) update the Compendium of Federal Statistical Programs on juvenile victims and offenders and work with the Office of Justice Programs' Crime Statistics Working Group and other Federal interagency statistics working groups; (3) provide technical support to OJJDP in enhancing the availability and accessibility of statistics on the OJJDP web site; (4) make recommendations to fill information gaps in the areas of juvenile probation, juvenile court and law enforcement responses to juvenile delinquency, violent delinquency, and child abuse and neglect; and (5) produce a second edition of *Juvenile Offenders and Victims: A National Report.*

This project will be implemented by the current grantee, NCJJ. No additional applications will be solicited in FY 1998.

Census of Juveniles in Residential Placement

The Census of Juveniles in Residential Placement (CJRP) is replacing the biennial Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities, known as the Children in Custody census. This newly designed census will collect detailed information on the population of juveniles who are in juvenile residential placement facilities as a result of contact with the juvenile justice system. Over the past 3 years, OJJDP and the Bureau of the Census, with the assistance of a Technical Advisory Board, have developed the CJRP to more accurately represent the numbers of juveniles in residential placement and to describe the reasons for their placement. A new method of data collection, tested in FY 1996, involves gathering data in a roster-

type format, often by electronic means. The new methods are expected to result in more accurate, timely, and useful data on the juvenile population, with less reporting burden for facility respondents.

In FY 1997, OJJDP funded initial implementation of the CJRP, including form preparation, mailout, and processing of census forms. In October 1997, the first census using the revised methodology was conducted.

OJJDP proposes to continue funding this project in FY 1998 to clean the data files, allowing the production of new data products based on the 1997 census.

This program would be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications would be solicited in FY 1998.

National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center

The National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center (NTTAC) was established in FY 1995 under a competitive 3-year project period award to Community Research Associates. NTTAC serves as a national training and technical assistance clearinghouse, inventorying and coordinating the integrated delivery of juvenile justice training/technical assistance resources and establishing a data base of these resources.

In FY 1995, work involved organization and staffing of the Center, orientation for OJJDP training/technical assistance providers regarding their role in the Center's activities, and initial data base development.

NTTAC's funding in FY 1996 provided services in the form of coordinated technical assistance support for OJJDP's SafeFutures and gang program initiatives, continued promotion of collaboration between OJJDP training/technical assistance providers, developed training/technical assistance materials, and completed and disseminated the first OJJDP *Training and Technical Assistance Resource Catalog.* In addition, NTTAC assisted State and local jurisdictions and other OJJDP grantees with specialized training, including the development of training-of-trainers programs. NTTAC continued to evolve as a central source for information pertaining to the availability of OJJDP-supported training/technical assistance programs and resources.

In FY 1997, NTTAC completed the first draft of the jurisdictional team training/technical assistance packages for gender-specific services and juvenile correctional services; provided training/technical assistance in support of OJJDP's SafeFutures and Gangs programs; updated and disseminated the second *Training and Technical Assistance Resource Catalog;* created a Web site for the Center and a ListServe for the Children, Youth and Affinity Group; held three focus groups on needs assessments; and coordinated and provided 38 instances of technical assistance in conjunction with OJJDP's training/technical assistance grantees and contractors.

In FY 1998, NTTAC plans to finalize, field test, and coordinate delivery of the jurisdictional team training/technical assistance packages on critical needs in the juvenile justice system, update the resource catalog, facilitate the annual OJJDP training/TA grantee and contractor meeting, continue to update the repository of training/TA materials and the electronic data base of training/TA materials, and continue to respond to training/TA requests from the field.

The current grantee, Community Research Associates, will complete its work in FY 1998. A new competitive solicitation would be issued in FY 1998 for a new project period.

Technical Assistance for State Legislatures

Since FY 1995, OJJDP has awarded annual grants to the National Conference of State Legislatures (NCSL) to provide relevant and timely information on comprehensive approaches in juvenile justice that are geared to the legislative environment. The purpose of this project is to aid State legislators in improving State juvenile justice systems when crafting legislative responses to youth violence. State legislatures have a unique role and responsibility in establishing State policy and approaches and appropriating funds for juvenile justice. Nearly every State has enacted, or is considering, statutory changes affecting the juvenile justice system. Historically, State legislatures have lacked the information needed to comprehensively address juvenile justice issues. Experience with this project indicates that policymakers find it has helped them understand the ramifications and nuances of juvenile justice reform.

Since OJJDP began funding this project, NCSL has conducted three invitational Legislator's Leadership Forums; sponsored sessions on juvenile justice reform at the NCSL annual meetings; expanded clearinghouse and juvenile justice enactment reporting; and produced and distributed a publication, *Legislator's Guide to Comprehensive Juvenile Justice.* The invitational meetings were attended by more than 100 legislators and additional legislative staff from 34 States selected as key decisionmakers on juvenile justice reform. Meeting sessions and information services reached at least 500 legislators or legislative staff in all States. In addition, project publications were distributed to more than 2,000 legislative members, staff, and agencies to provide for further broad distribution of information central to comprehensive strategies in juvenile justice to a State legislative audience throughout the States.

The grant has improved capacity for the delivery of information services to legislatures, with the number of information requests handled for legislators and staff having increased to about 500 per year. It is expected that the Children and Families and Criminal Justice programs will respond to another 500 information requests in FY 1998.

In FY 1998, NCSL would further identify, analyze, and disseminate information to assist State legislatures to make more informed decisions about legislation affecting the juvenile justice system. A complementary task involves supporting increased communication between State legislators and State and local leaders who influence decisionmaking regarding juvenile justice issues. NCSL would provide intensive technical assistance to four States, continue outreach activities, and maintain its clearinghouse function. Additionally, NCSL would assist in the production of a live satellite videoconference directed primarily to State legislators.

The project would be implemented by the current grantee, NCSL. No additional applications would be solicited in FY 1998.

Telecommunications Assistance

Developments in information technology and distance training have expanded and enhanced OJJDP's capacity to disseminate information and provide training and technical assistance. The advantages of these technologies include increased access to information and training for professionals in the juvenile justice system, reduced travel costs to conferences, and reduced time attending meetings away from one's home or office. OJJDP uses this cost-effective medium to share with the field the salient elements of the most effective or promising approaches to various juvenile justice issues. The field has responded positively to these live satellite teleconferences and has come to expect them at regular intervals.

OJJDP selected Eastern Kentucky University (EKU) through a competitive program announcement in FY 1992 to conduct a feasibility study on using this technology in its programming. In FY 1995, EKU was awarded a competitive grant to undertake production of live satellite videoconferences. Since the inception of this grant in FY 1995, EKU has produced 13 live satellite teleconferences, with an average of 360 downlink sites participating in each. The project produced four teleconferences in FY 1995 (Juvenile Boot Camps, Reducing Youth Gun Violence, Youth Out of the Education Mainstream, and Conflict Resolution for Youth), four in FY 1996 (Community Collaboration, Effective Programs for Serious, Violent, and Chronic Juvenile Offenders, Youth-Oriented Community Policing, Leadership Challenges for Juvenile Detentions and Corrections), and five in FY 1997 (Has the Juvenile Court Outlived Its Usefulness?, Youth Gangs in America, Preventing Drug Abuse Among Youth, Mentoring for Youth, and Treating Drug-Involved Youth).

In FY 1998, OJJDP proposes to continue the cooperative agreement with EKU in order to provide program support and technical assistance for a variety of information technologies, including audioconferences, fiber optics, and satellite teleconferences, producing four to five additional live national satellite teleconferences. The grantee would also continue to provide technical assistance to other grantees interested in using this technology and explore linkages with key constituent groups to advance mutual information goals and objectives.

This project would be implemented by the current grantee, EKU. No additional applications would be solicited in FY 1998.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

This contract provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. OJJDP proposes to extend the current contract in FY 1998 until a new contract can be competitively awarded. Applications have been solicited, and the new contract is expected to be awarded shortly.

This contract would be implemented by the current contractor, Aspen Systems Corporation, until a new contract is awarded.

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) is OJJDP's central source for the collection, synthesis, and dissemination of information on all aspects of juvenile justice, including research and evaluation findings; State and local juvenile delinquency prevention and treatment programs and plans; availability of resources; training and educational programs; and statistics. JJC serves the entire juvenile justice community, including researchers, law enforcement officials, judges, prosecutors, probation and corrections staff, youth-service personnel, legislators, the media, and the public.

Among its many support services, JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and data base; and administers several electronic information resources. Recognizing the critical need to inform juvenile justice practitioners and policymakers on promising program approaches, JJC continually develops and recommends new products and strategies to communicate more effectively the research findings and program activities of OJJDP and the field. The entire NCJRS, of which the OJJDP-funded JJC is a part, is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation.

This program would continue to be implemented by the current contractor, Aspen Systems Corporation, until the new contract is awarded. NIJ will issue a new competitive solicitation in the near future, and a new contract will be awarded during FY 1998.

Insular Area Support

The purpose of this program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by Section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. 5665(e).

Community Assessment Centers (CAC's)

The Community Assessment Center (CAC) program is a multicomponent demonstration initiative designed to test the efficacy of the Community Assessment Center concept. CAC's provide a 24-hour centralized point of intake and assessment for juveniles who have or are likely to come into contact with the juvenile justice system. The main purpose of a CAC is to facilitate earlier and more efficient prevention and intervention service delivery at the ''front end'' of the juvenile justice system. In FY 1997, OJJDP funded two planning grants and two enhancement grants to existing assessment centers for a 1-year project period, a CAC evaluation project, and a technical assistance component.

The planning grants were awarded to the Denver Juvenile Court in Denver, Colorado, and to the Lee County Sheriff's Office in Fort Myers, Florida, to support a 1-year intensive planning process for the development and implementation of a CAC in each community. In Denver, community leaders are assessing the feasibility of a CAC and building on existing infrastructure developed with support from the Center for Substance Abuse Treatment's Juvenile Justice Integrated Treatment Network program. In Fort Myers, community leaders are completing an initial planning process and are planning to open their CAC in 1998. Planning in this site will continue after implementation and will focus on enhancing the CAC in Fort Myers to become more consistent with the CAC concept and on developing linkages with the community's Comprehensive Strategy initiative.

The enhancement component of the CAC program is designed to increase the effectiveness and efficiency of existing assessment centers by supporting various and specific program enhancements and to provide support to existing assessment centers in an effort to create consistency with OJJDP's CAC concept.

Also in FY 1997, two communities received 1-year awards to help existing assessment centers provide enhanced services and to demonstrate the effectiveness of the CAC concept overall. Jefferson Center for Mental Health in Jefferson County, Colorado, and Human Service Associates, Inc., in Orlando, Florida, were competitively selected to receive awards under the CAC program on the basis of their demonstrated commitment to specifically implement an enhancement that makes the existing CAC more consistent with the CAC concept. The Jefferson Center for Mental Health is developing an improved ''single point of entry'' and an improved management information system and other enhancements consistent with the OJJDP CAC concept. Human Services

Associates, Inc., is creating an intensive integrated case management system for high-risk youth referred to the CAC, an enhancement also consistent with the OJJDP CAC concept.

In FY 1998, OJJDP proposes to provide an additional year's funding to support the full and continued implementation of selected CAC enhancements and additional support to the sites awarded planning grants in FY 1997. This funding would enable these sites to begin implementing the CAC's planned for with OJJDP funding support or to enhance existing operations.

The CAC initiative evaluation component, being conducted by the National Council on Crime and Delinquency, and the technical assistance component, being delivered by the Florida Alcohol and Drug Abuse Association, were funded in FY 1997 for a 2-year project period and will not require additional funds in FY 1998.

These programs would be implemented by the current grantees, Jefferson Center for Mental Health, Human Service Associates, Inc., Denver Juvenile Court, and Lee County Sheriff's Office. No additional applications would be solicited in FY 1998.

Training and Technical Assistance Coordination for SafeFutures Initiative

OJJDP proposes to provide funding for long-term training and technical assistance (TA) for the remaining 3 years of the SafeFutures initiative. The purpose of this TA effort would be to build local capacity for implementing and sustaining effective continuum of care and systems change approaches to preventing and controlling juvenile violence and delinquency in the six SafeFutures communities. Project activities would include assessment, identification, and coordination of the implementation of training and TA needs at each SafeFutures site and administration of cross-site training.

Public Safety and Law Enforcement

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

This program supports the implementation of a comprehensive gang program model in five jurisdictions. The program was competitively awarded with FY 1994 funds under a 3-year project period. The demonstration sites implementing the model, which was developed by the University of Chicago with OJJDP funding support, are Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona. Implementation of the comprehensive gang program model requires the mobilization of the community to address gang-related violence by making available and coordinating social interventions, providing social/academic/vocational and other opportunities, and supporting gang suppression through law enforcement, probation, and other community control mechanisms.

During the past year, the demonstration sites began full-scale implementation of the program model and began serving gang-involved youth in the targeted areas. In each site, a multidisciplinary team has been established to coordinate the services that project youth receive. Teams are made up of various community institution representatives, including police, probation, outreach or street workers, court representatives, service providers, and others. The services provided through this team—or recommended by them—include social interventions such as outreach, case management, counseling, substance abuse treatment, anger management, life skills, cultural awareness, controlled recreation activities, access to educational, social, and economic opportunities such as GED attainment, school reintegration, vocational training, and job development and placement. Also included in the service mix is accountability or social control. This is provided through traditional suppression from law enforcement and probation, and also accountability through the schools, community-based agencies, parents, families, and community members. The team meets regularly to go over progress with each youth, so that each team member is aware of prevailing risks and positive developments and can use this information to be supportive of the youth when contacted in the field by providing additional services, modifying ''treatment plans,'' or invoking accountability measures ranging from values clarification and general motivational support to arrest and prosecution. In addition to core team members, other agencies also support the programs, such as the faith community, local Boys and Girls Clubs, and alternative and mainstream schools.

In some sites, prevention components have been established to work hand-in-hand with the intervention and suppression program. For example, in one site a mentoring program has been established for youth who are younger siblings of gang members targeted in the intervention components.

The demonstration sites also participated in training and technical assistance activities, including cluster conferences sponsored by OJJDP and site-specific consultations on issues such as information sharing and outreach activities.

In FY 1998, OJJDP proposes to provide a fourth year of funding to the demonstration sites to target up to 200 youth prone to gang violence in each site through continuing implementation of the program model and work with the independent evaluator of this demonstration program.

This project would be implemented by the current demonstration sites. No additional applications would be solicited in FY 1998.

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

The University of Chicago, School of Social Service Administration, received a competitive cooperative agreement award in FY 1995. This 4-year project period award supports the evaluation of OJJDP's Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program. The evaluation grantee assisted the five program sites (Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona) in establishing realistic and measurable objectives, documenting program implementation, and measuring the impact of a variety of gang program strategies. It has also provided interim feedback to the program implementors.

In FY 1997, following two years of program development and evaluation design, the grantee trained the local site interviewers; gathered and tracked data from police, prosecutor, probation, school, and social service agencies; collected individual gang member interviews from both the program and comparison areas; provided onsite technical assistance to the local sites; consulted with local evaluators on development and implementation of local site parent/community resident surveys; and coordinated ongoing efforts with local researchers.

In FY 1998, the grantee will continue to gather and analyze data required to evaluate the program; monitor and oversee the quality control of data; provide assistance for completion of interviews; and provide ongoing feedback to project sites.

This project will be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications will be solicited in FY 1998.

Targeted Outreach With a Gang Prevention and Intervention Component (Boys and Girls Clubs)

This program is designed to enable local Boys and Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. In FY 1997, Boys and Girls Clubs of America provided training and technical assistance to 30 existing gang prevention and 4 intervention sites and expanded the gang prevention and intervention program to 23 additional Boys and Girls Clubs, including to some of those in the OJJDP SafeFutures sites. A national evaluation of this program, through Public/Private Ventures, was also started in FY 1997 under this award.

In FY 1998, Boys and Girls Clubs of America would provide training and technical assistance to 20 new gang prevention sites, 3 new intervention sites, and 6 SafeFutures sites.

This program would be implemented by the current grantee, the Boys and Girls Clubs of America. No additional applications would be solicited in FY 1998.

National Youth Gang Center

The proliferation of gang problems in large inner cities, smaller cities, suburbs, and even rural areas over the past two decades led to the development by OJJDP of a comprehensive, coordinated response to America's gang problem. This response involved five program components, one of which was the implementation and operation of the National Youth Gang Center (NYC). The NYGC was competitively awarded in FY 1995 for a 3-year project period. The NYGC was created to expand and maintain the body of critical knowledge about youth gangs and effective responses to them.

In FY 1997, NYGC continued to assist state and local jurisdictions to collect, analyze and exchange information on gang-related demographics, legislation, literature, research and promising program strategies. It also supported the work of the National Gang Consortium, a group of federal agencies, gang program representatives and researchers. A major activity was a survey of all federal agencies and the presentation of data on their programs, planning cycles and other resources. It continued to promote the collection and analysis of gang related data and published the results of its first National Youth Gang Survey of 2,000 law enforcement agencies.

OJJDP proposes to extend the project an additional year and provide FY 1998 funds to NYGC to conduct more indepth analyses of the first and second National Youth Gang Survey results that track changes in the nature and scope of the youth gang problem. NYGC, through its Focus Group on Data Collection and Analysis, will also continue its efforts to foster integration of gang-related items into other relevant surveys and national data collection efforts.

Fiscal year 1998 funds would support an additional year of funding to the current grantee, the Institute for Intergovernmental Research. No additional applications would be solicited in FY 1998.

Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program

COSMOS Corporation received a competitive award in FY 1997. This 3-year project period award supports OJJDP's Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program. The program will document and evaluate the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing gun violence involving juveniles in four sites. The sites are Baton Rouge, Louisiana; Oakland, California; Shreveport, Louisiana; and Syracuse, New York.

In FY 1997, the grantee conducted onsite technical assistance workshops with partner organizations and assisted the sites in planning and developing local Partnerships To Reduce Juvenile Gun Violence.

In FY 1998, the grantee will develop data collection protocols, conduct a process evaluation, and continue to provide onsite technical assistance to the sites. In addition to the four sites listed above, the grantee will also identify additional promising/effective programs underway in communities across the country and evaluate a select number of these programs. With an expanded base of youth gun violence programs, there is greater opportunity to identify sites that are employing similar strategies with different targeted populations.

This evaluation will be implemented by the current grantee, COSMOS Corporation. No additional applications will be solicited in FY 1998.

The Chicago Project for Violence Prevention

The Chicago Project for Violence Prevention's primary goal is the development of a citywide, accelerated, long-term effort to reduce violence in Chicago. In addition, the Chicago Project serves to demonstrate a comprehensive, citywide violence prevention model. Overall project objectives include reductions in homicide, physical injury, disability and emotional harm from assault, domestic abuse, sexual abuse and rape, and child abuse and neglect.

The Chicago Project is a partnership among the Chicago Department of Public Health, the Illinois Council for the Prevention of Violence, the University of Illinois, and Chicago communities. The project began in January 1995 with joint funding from OJJDP and the Centers for Disease Control and prevention (CDC), National Center for Injury Prevention and Control (NCIPC), the Bureau of Justice Assistance, and the Department of Housing and Urban Development. The project currently provides technical assistance to a variety of community-based and citywide organizations involved in violence prevention planning. The majority of the technical assistance supports community level efforts and agencies working to directly support the community plan.

In FY 1996, technical assistance was provided to the central planning group for the Austin community-based coalition, leadership and staff of the Westside Health Authority in the Austin community, and to other selected groups involved in the Austin plan for the development of their components (e.g., to Northwest Austin Council for the development of the afterschool and drug treatment components of the Austin plan). These groups are members of the violence consortium in Austin.

In FY 1997, the Chicago Project further refined the violence prevention strategy developed in the Austin community, began implementation of the strategy, and continued to provide technical assistance to the Logan Square and Grand Boulevard communities as they developed their violence prevention strategies.

In FY 1998, OJJDP proposes to continue funding the project, which would complete the strategic planning process with Logan Square and Grand Boulevard and continue to work with Austin in implementing its strategy.

The Chicago Project for Violence Prevention would be implemented by the current grantee, the University of Illinois, School of Public Health. No additional applications would be solicited in FY 1998.

Safe Start—Child Development-Community-Oriented Policing (CD–CP)

The Child Development-Community-Oriented Policing (CD–CP) program, an innovative partnership between the New Haven Department of Police Services and the Child Study Center at

the Yale University School of Medicine, addresses the psychological burdens on children, families, and the broader community of increasing levels of community violence. In FY 1993, OJJDP provided support to document Yale—New Haven's child-centered, community-oriented policing model. The program model consists of interrelated training and consultation, including a child development fellowship for police supervisors; police fellowship for clinicians; seminars on child development, human functioning, and policing strategies; a 15-hour training course in child development for all new police officers; weekly collaborative meetings and case conferences that support institutional changes in police practices; and establishment of protocols for referral and consultation to ensure that children receive the services they need.

In FY 1994, the Bureau of Justice Assistance, using community policing funds, joined with OJJDP to support the first year of a 3-year training and technical assistance grant to replicate the CD–CP program nationwide. In each of FY's 1995, 1996, and 1997, OJJDP provided grants of $300,000 to the Yale Child Study Center to replicate the model through training of law enforcement and mental health providers in Buffalo, New York; Charlotte, North Carolina; Nashville, Tennessee; and Portland, Oregon.

The CD–CP program has provided a wide range of coordinated police and clinical responses in the four replication sites, including round-the-clock availability of consultation with a clinical professional and a police supervisor to patrol officers who assist children exposed to violence; weekly case conferences with police officers, educators, and child study center staff; open police stations located in neighborhoods and accessible to residents for police and related services; community liaison and coordination of community response; crisis response; clinical referral; interagency collaboration; home-based followup; and officer support and neighborhood foot patrols. In the CD–CP program's last 4 years of operation in the New Haven site, more than 450 children have been referred to the consultation service by officers in the field. It is anticipated that these results can be obtained in the replication sites.

In FY 1997, through a partnership between OJJDP, Violence Against Women Grants Office, and Office for Victims of Crime (OVC), $700,000 ($300,000 from OJJDP, $300,000 from the Violence Against Women Grants Office, and $100,000 from OVC) was allocated to CD–CP to expand the program under a new Safe Start Initiative designed to support the following activities:

- Development of a training and technical assistance center in New Haven consisting of a team of expert practitioners who provide training for law enforcement, prosecutors, mental health professionals, school personnel, and probation and parole officers to better respond to the needs of children exposed to community violence including but not limited to family violence, gang violence, and abuse or neglect.
- Plan for expansion of program sites from the original four. Future sites, the total number of which are yet to be determined, will be selected competitively based upon each site's capacity to establish a core police/mental health provider team concerned with child victimization.
- Further research, data collection, analysis, and evaluation of CD–CP in the program sites.
- The development of a casebook for practitioners, which will detail intervention strategies and various aspects of the CD–CP collaborative process.

In order to continue this work in FY 1998, this project will be continued by the current grantee, the Yale University School of Medicine, in collaboration with the New Haven Department of Police Services. No additional applications will be solicited in FY 1998.

Law Enforcement Training and Technical Assistance Program

Juvenile crime and victimization present major challenges to law enforcement and other practitioners who are responsible for prevention, intervention, and enforcement efforts. Violent crime committed by juveniles, juvenile involvement in gangs and drugs, and decreasing fiscal resources are a few of the challenges facing juvenile justice practitioners today.

OJJDP is committed to helping Federal, State, local, and tribal agencies, organizations, and individuals face these challenges through a comprehensive program of training and technical assistance that is designed to enhance the juvenile justice system's ability to respond to juvenile crime and delinquency. This assistance targets many audiences, including law enforcement representatives, social service workers, school staff and administrators, prosecutors, judges, corrections and probation personnel, and key community and agency leaders.

In FY 1997, a 3-year contract period was awarded to John Jay College of Criminal Justice (John Jay) for the Law Enforcement Training and Technical Assistance program. Since the program's inception in March 1997, John Jay has trained approximately 700 State, local, and tribal workshop participants and provided requested onsite technical assistance to 16 communities.

Fiscal year 1998 funds will support the continuation of seven regional training workshops: the Chief Executive Officer Youth Violence Forum; Managing Juvenile Operations (MJO); Gang, Gun, and Drug Policy; School Administrators for Effective Operations Leading to Improved Children and Youth Services (SAFE Policy); Youth Oriented-Community Policing; Tribal Justice Training and Technical Assistance; and the Serious Habitual Offender Comprehensive Action Program (SHOCAP). A minimum of 10 of these regional trainings are planned in FY 1998, with onsite technical assistance provided, upon request. Participants in the workshops will have access to followup technical assistance that will enable them to devise, implement, modify, and evaluate community partnerships and programs in their localities. Online, computer-assisted training will also be available on OJJDP's Web page, along with workshop information.

This project will be implemented by the current contractor, John Jay College of Criminal Justice. No additional applications will be solicited in FY 1998.

Partnerships To Reduce Juvenile Gun Violence

OJJDP will award continuation grants of up to $200,000 to each of four competitively selected communities that initially received funds in FY 1997 to help them increase the effectiveness of existing youth gun violence reduction strategies by enhancing and coordinating prevention, intervention, and suppression strategies and strengthening linkages between community residents, law enforcement, and the juvenile justice system. Baton Rouge, Louisiana; Oakland, California; Shreveport, Louisiana; and Syracuse, New York, were competitively selected to receive 3-year awards.

The goals of this initiative are to reduce juveniles' illegal access to guns and address the reasons they carry and use guns in violence exchanges. Each of the sites is required to address five objectives: (1) Reduce illegal gun availability to juveniles; (2) reduce the incidence of juveniles' illegally carrying guns; (3) reduce juvenile gun-related

crimes; (4) increase youth awareness of the personal and legal consequences of gun violence; and (5) increase participation of community residents and organizations in public safety efforts.

To accomplish the goals and objectives, each site will complete the development of a comprehensive plan and incorporate the following seven strategies in the target area:

(1) Positive opportunity strategies for young people, such as mentoring, job readiness, and afterschool programs.

(2) An educational strategy in which students learn how to resolve conflicts without violence, resist peer pressure to possess or carry guns, and distinguish between real violence and television violence.

(3) A public information strategy that uses radio, local television, and print outlets to broadly communicate to young people the dangers and consequences of gun violence and present information on positive youth activities taking place in the community.

(4) A law enforcement/community communication strategy that expands neighborhood communication; community policing, such as a program that notifies neighborhood residents when particular incidents or concerns have been addressed; and community supervision to educate at-risk and court-involved juveniles on the legal consequences of their involvement in gun violence.

(5) A grassroots community involvement and mobilization strategy that engages neighborhood residents, including youth, in improving the community.

(6) A suppression strategy that reduces juvenile access to illegal guns and illegal gun trafficking in communities by developing special gun units, using community allies to report illegal gun trade, targeting gang members and illegal gun possession cases for prosecution, and increasing sanctions.

(7) A juvenile justice system strategy that applies appropriate treatment interventions to respond to the needs of juvenile offenders who enter the system on gun-related charges. Interventions may include specialized gun courts, family counseling, victim impact awareness classes, drug treatment, probation, or intensive community supervision, including aftercare. The approach should focus on addressing the reasons juveniles had access to, carried, and used guns illegally.

A national evaluation is being conducted by COSMOS Corporation to document and understand the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing juvenile gun violence.

The Partnerships To Reduce Juvenile Gun Violence program will be carried out by the four current grantees. No additional applications will be solicited in FY 1998.

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Technical Assistance and Training

Since 1995, OJJDP has provided funding to five communities to implement and test a comprehensive program model for gang prevention, intervention and suppression, known as the Spergel model. In 1997, the sites were awarded continuation funding for the third year of a 3-year project period grant to continue program implementation. OJJDP is proposing to provide a fourth year of funding for this program.

To support the ongoing implementation and a potential fourth year of operations (being proposed elsewhere in this Program Plan), OJJDP proposes to provide funding to the University of Chicago for enhanced technical assistance and training services. This award would be made to the University's Gang Research, Evaluation and Technical Assistance (GRETA) program, through the School of Social Service Administration. Technical assistance and training to be provided through this award may include technical assistance and training to law enforcement, probation, and parole on their role in the model; technical assistance to community and grassroots organizations on their role in the model; and technical assistance on team development, information sharing, information systems, and data collection and on issues of sustainability and organizational and systems change to better deal with the community's youth gang problem. Other training and technical assistance services to be provided may include the development of relevant materials for onsite use, such as a manual on the model being implemented (in response to the national evaluation advisory board's recommendations), a manual on youth outreach and a ''lessons learned'' publication or other materials, including audiovisual and electronic media. Training and technical assistance services provided under this project would be limited to OJJDP's comprehensive gang demonstration sites in Mesa and Tucson, Arizona; Riverside, California; Bloomington, Illinois; and San Antonio, Texas.

This project would be implemented by the current grantee, the University of Chicago. No additional applications would be solicited in FY 1998.

Rural Youth Gang Problems—Adapting OJJDP's Comprehensive Approach

In 1996, OJJDP's National Youth Gang Center completed its first annual nationwide survey of law enforcement agencies regarding gang problems experienced in their jurisdictions. This survey represents the largest number of small law enforcement agencies in rural counties ever surveyed. Among the findings of this survey is that half of the 2,007 gang survey respondents reporting youth gang problems in 1995 serve populations under 25,000, confirming that youth gangs are not just a problem for large cities and metropolitan counties. Youth gangs are emerging in new localities, especially smaller and rural communities. Many of the agencies in smaller and rural communities had no personnel assigned to deal with youth gangs or gang units.

OJJDP's Comprehensive Approach to Gang Prevention, Intervention, and Suppression (Spergel Model) is currently being implemented and tested in multiple jurisdictions. The communities implementing the model are mainly suburban and urban in nature, with areas of dense population within the community.

In light of the rural gang problems exposed by the nationwide gang survey, OJJDP is considering funding a new initiative to assist rural communities in implementing the fully adaptable Comprehensive Approach in a way that is appropriate to rural community needs, through a comprehensive and systematic problem assessment and program design process. Upon completion of the problem assessment using law enforcement-based gang incident, census, and other data, communities would engage in a process of adapting and applying the Comprehensive Approach in a way that responds to the gang problems identified.

OJJDP is considering awarding funds to rural communities to implement a rural youth gang program and also awarding funds for related evaluation and technical assistance services.

Delinquency Prevention and Intervention

Youth-Centered Conflict Resolution

In FY 1995, OJJDP funded the Illinois Institute for Dispute Resolution (IIDR) to implement the Youth-Centered Conflict Resolution (YCCR) program under a competitively awarded 3-year

cooperative agreement. The purpose of this program, which began in October 1995, is to integrate conflict resolution education (CRE) programming into all levels of education in the Nation's schools, juvenile facilities, and youth-serving organizations.

During the first 2 years, IIDR provided training and technical assistance through a number of mechanisms. In year one, activities included participation in the development of a satellite teleconference on CRE, a presentation on the YCCR program at the National Institute for Dispute Resolution annual conference, and three regional training conferences for teams from schools, communities, and juvenile facilities. IIDR also completed the project's first major resource document, *Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings.* Second-year activities included followup training and intensive technical assistance including onsite work with the Washington, DC, school system. In the second project year, with additional funding from the National Endowment for the Arts, IIDR developed a pilot curriculum and conducted a series of 10 training sessions to assist arts program staff and administrators in infusing conflict resolution skills and principles into art programs for at-risk youth.

Activities planned for FY 1998 include three national training conferences, onsite technical assistance to SafeFutures, Weed and Seed, and other sites, increased followup support, and a survey of gang intervention programs to identify those that use conflict resolution techniques as part of their efforts.

Also, IIDR will expand the level of support that project staff provide to schools, communities, and youth-serving organizations, including training provided in partnership with national organizations such as Boys and Girls Clubs of America and the National Juvenile Detention Association. Efforts will also be undertaken to facilitate peer-to-peer mentoring among youth education and youth-serving organizations. Special emphasis will be placed on disseminating information about effective conflict resolution programs and implementation issues through print and electronic media. Project staff will also work with staff in State departments of education and offices of State Attorneys General to promote replication of local conflict resolution programs and to partner with State agencies to establish ''training of trainers'' institutes or programs to build local capacity to implement successful CRE programs for youth.

OJJDP is exploring the possibility of a partnership with the U.S. Department of Education to expand this project. The project will be implemented by the current grantee, IIDR. No additional applications will be solicited in FY 1998.

Communities In Schools—Federal Interagency Partnership

This program is a continuation of a national school dropout prevention model developed and implemented by Communities In Schools (CIS), Inc. CIS, Inc., provides training and technical assistance to CIS programs in States and local communities, enabling them to adapt and implement the CIS model. The model brings social, employment, mental health, drug prevention, entrepreneurship, and other resources to high-risk youth and their families in the school setting. Where CIS State organizations are established, they assume primary responsibility for local program replication during the Federal Interagency Partnership.

The Federal Interagency Partnership program is based on the following strategies: (1) To enhance CIS, Inc., training and technical assistance capabilities; (2) to enhance the organization's capability to introduce selected initiatives to CIS youth at the local level; (3) to enhance the CIS, Inc., information dissemination network capability; and (4) to enhance the CIS, Inc., capability to network with Federal agencies on behalf of State and local CIS programs.

In FY 1997, the CIS—Federal Interagency Partnership: (1) Performed extensive research and compilation of conference materials and other resources outlining trends and activities related to family strengthening and parent participation initiatives; (2) produced a quarterly issue of *Facts You Can Use;* (3) formed a committee responsible for developing a description of the Family Service Center site strategy; (4) formulated a plan for providing training and technical assistance to SafeFutures sites; (5) advanced activities under the Youth Entrepreneurship Program by implementing the second phase of the minigrant process and by providing technical assistance; (6) developed a violence prevention resource directory and offered training on violence prevention; (7) provided program-level liaison and coordination to facilitate access by State and local CIS organizations to Federal agency products; and (8) added new features to the CIS web site to increase local and State program access to Federal resources.

OJJDP proposes to continue funding this project in FY 1998 for activities including: (1) Provide continuing training and technical assistance on family strengthening and parent participation initiatives for the primary benefit of CIS State and local programs; (2) develop a report on known family strengthening activities occurring within the CIS network of local programs, highlighting best practices; (3) make available to the CIS network resources and materials developed by other organizations that deal with family-focused issues; (4) offer multitrack trainings to SafeFutures sites and, as appropriate, provide technical assistance on the CIS process; and (5) produce and distribute the CIS *Facts You Can Use* technical bulletin quarterly.

The program would be implemented by the current grantee, Communities In Schools, Inc. No additional applications would be solicited in FY 1998.

The Congress of National Black Churches: National Anti-Drug Abuse/ Violence Campaign (NADVC)

OJJDP proposes to award continuation funding to the Congress of National Black Churches (CNBC) for its national public awareness and mobilization strategy to address the problems of juvenile drug abuse, violence, and hate crime in targeted communities. The goal of the CNBC national strategy is to summon, focus, and coordinate the leadership of the black religious community, in cooperation with the Department of Justice and other Federal agencies and organizations, to mobilize groups of community residents to combat juvenile drug abuse and drug-related violence.

The CNBC National Anti-Drug Abuse/ Violence Campaign (NADVC) is a partner in the Education Development Center's (EDC) Juvenile Hate Crime Initiative. NADVC has used EDC's hate crime curriculum to focus on prevention through the networks and resources in the faith community to address the impact and roles of juveniles and youth in engaging in and preventing hate crimes. Two regional conferences were held during the past year in Columbus, South Carolina, and Memphis, Tennessee. Approximately 80 participants, representing more than 20 burned churches from black and white congregations, attended.

In FY 1997, the program expanded through NADVC's Regional Hate Crime Prevention Initiative, the Campaign's model for anti-drug/violence strategies, and NADVC's faith community network.

NADVC has assisted in the development of programs in 87 sites, whose activities vary depending on their stage of development. The smallest of these alliances consists of 6 congregations and the largest has 134. The NADVC program involves approximately 2,220 clergy and affects 1.5 million youth and the adults who influence their lives. NADVC also provides technical support to four statewide religious coalitions.

NADVC's technical assistance, consultations, and training have helped sites to leverage more than $15 million in funds from corporations, foundations, and Federal, State, and local government. CNBC receives frequent requests for its NADVC model for the development of prevention programs in the faith community. The model is easily tailored to the local community's assessment of its drug, delinquency, violence, and hate crime problems.

NADVC has contributed to many agency conferences, workshops, and advisory committees on the issues of violence, substance abuse prevention, policing, and high-risk youth services. The Campaign has also produced a *National Training and Site Development Guide* and a video to assist sites in implementing the NADVC model.

NADVC would continue to expand to new sites in FY 1998, seek new partnerships, and enhance efforts to address hate crime and family violence intervention issues.

The program would be implemented by the current grantee, the Congress of National Black Churches. No additional applications would be solicited in FY 1998.

Risk Reduction Via Promotion of Youth Development

The Risk Reduction Via Promotion of Youth Development program, also known as Early Alliance, is a large-scale prevention study involving hundreds of children and several elementary schools located in lower socioeconomic neighborhoods of Columbia, South Carolina. This program is funded through an interagency agreement with the National Institute of Mental Health (NIMH). NIMH's grantee is the University of South Carolina. The Centers for Disease Control and Prevention and the National Institute on Drug Abuse have also provided funding for the program.

This large-scale project is designed to promote coping-competence and reduce risk for conduct problems, aggression, substance use, delinquency and violence, and school failure beginning in early elementary school. The project also seeks to alter home and school climates to reduce risk for adverse outcomes and to promote positive youth development. Interventions include a classroom program, a schoolwide conflict management program, peer social skills training, and home-based family programming. The sample includes African American and Caucasian children attending schools located in lower income neighborhoods. There is a sample of high-risk children (showing early aggressive behavior at school entry), and a second sample consisting of lower risk children (residing in socioeconomically disadvantaged neighborhoods). The interventions begin in first grade, and children are being followed longitudinally throughout the 5 years of the project.

Funded initially in FY 1997 through a fund transfer to NIMH under an interagency agreement, support will be continued for an additional 4 years. No additional applications will be solicited in FY 1998.

Training and Technical Assistance for Family Strengthening Programs

Prevention, early intervention, and effective crisis intervention are critical elements in a community's family support system. In many communities, one or more of these elements may be missing or programs may not be coordinated. In addition, technical assistance and training are often not available to community organizations and agencies providing family strengthening services. In response to these needs, OJJDP awarded a 3-year competitive cooperative agreement in FY 1995 to the University of Utah's Department of Health Education (DHE) to provide training and technical assistance to communities interested in establishing or enhancing a continuum of family strengthening efforts.

In the first program year, the grantee completed initial drafts of a literature review and summaries of exemplary programs; conducted a national search for, rated, and selected family strengthening models; planned 2 regional training conferences to showcase the selected exemplary and promising family strengthening programs; convened the first conference for 250 attendees in Salt Lake City, Utah; and developed an application process for sites to receive followup training on specific program models.

In the second program year, DHE completed a second draft of the literature review and model program summaries; convened a second regional conference in Washington, D.C.; conducted program-specific workshops; produced user and training-of-trainers guides; and distributed videos of several family strengthening workshops.

In the third program year, DHE will coordinate technical assistance and training of agencies that are in the process of implementing the identified model programs. In addition, the grantee will establish a minigrant supplement program to provide stipends to a minimum of 10 sites to ensure program implementation. DHE will also update and publish its literature review and develop program-specific bulletins to be distributed by OJJDP and also made available on the OJJDP Web site. The grantee's technical assistance delivery system and the overall impact of the project will also be assessed.

This program will be implemented in FY 1998 by the current grantee, the University of Utah's DHE. No additional applications will be solicited in FY 1998.

Hate Crime

In FY 1998, OJJDP would provide continuation funding to the Education Development Center (EDC) to expand their hate crime prevention efforts. EDC has produced and published a multipurpose curriculum, entitled *Healing the Hate*, for hate crime prevention in middle schools and other classroom settings. The curriculum has been disseminated to 20,000 law enforcement, juvenile justice professionals, and educators throughout the country.

Because of increased racial, ethnic, and religious tensions and hate crimes in various regions of the country, OJJDP expanded this grant to allow EDC to provide training and technical assistance to youth, educators, juvenile justice and law enforcement professionals and representatives of local public/private community agencies and organizations and the faith community. The recipients of this training/technical assistance obtained the knowledge and skills necessary to establish prejudice reduction and violence prevention programs to decrease bias crimes by youth in their communities. During the past year, EDC conducted training/technical assistance at three sites in different regions of the country (Boston, Massachusetts; Chicago, Illinois; and Miami, Florida). Dissemination of products was achieved through national educational, advocacy, and justice networks and at 15 other national conferences. In FY 1997, additional Hate Crimes project activities were funded through an interagency agreement with the U.S. Department of Education.

In FY 1998, EDC would provide expanded training/technical assistance to new sites and further disseminate the products through the education and juvenile justice networks. In addition, EDC would develop a plan for providing onsite, short-term technical assistance to practitioners who are experiencing specific hate crime problems, are interested in assessing the extent of these problems in their locales, or are developing, implementing, or modifying hate crime prevention strategies. EDC would also develop a plan to assist State juvenile justice agencies to formulate hate crime prevention components for their juvenile delinquency prevention plans.

Guides to the development of hate crime prevention strategies for selected audiences (juvenile justice agencies, schools, communities) and hate crime prevention articles and bulletins would be produced and disseminated. The grantee would research, analyze, and synthesize information on emerging issues such as the juvenile justice system's handling of hate crime offenders, alternative dispositions for youth who commit hate crimes, and approaches to prevention of gender-related hate crimes and those that target other specific populations, such as immigrants.

The project would be implemented, in partnership with the U.S. Department of Education, by the current grantee, Education Development Center. No additional applications would be solicited in FY 1998.

Strengthening Services for Chemically Involved Children, Youth, and Families

The abuse of alcohol and other drugs (AOD) is inextricably linked with both personal and economic adversity and crime in society. Alcohol and drug abuse exact a devastating toll, especially on the most vulnerable—young children and adolescents. Recognizing that the U.S. Department of Justice and the U.S. Department of Health and Human Services are both servicing the same pool of children affected by parental substance use/abuse, the two Departments have initiated a joint program.

OJJDP will administer this training and technical assistance program, with FY 1997 funds transferred to OJJDP by the Substance Abuse and Mental Health Services Administration (SAMHSA) through a cooperative agreement to the Child Welfare League of America (CWLA). To achieve maximum effectiveness in aiding chemically involved families, child welfare professionals must be able to address entrenched family problems caused by alcohol and other drug abuse, while simultaneously delivering services that protect and promote the health and well-being of children. These professionals need information, resource materials, and training to increase their knowledge of the link between chemical dependency and a host of related conditions that negatively affect child and family well-being.

CWLA, a nonprofit organization, will carry out the required activities of this interagency agreement by assisting child welfare personnel to provide appropriate intervention services for AOD-impacted children and their caregivers. Through collaboration between the CWLA program, policy specialists in chemical dependency, child protective services, family support services, foster care, kinship care, and a cadre of other agencies, CWLA will produce a state-of-the-art comprehensive assessment tool and decisionmaking guidelines that frontline child welfare workers and supervisors can use in determining: (1) How alcohol and drugs are impacting child safety and family functioning and (2) the most appropriate intervention options for each child victim.

CWLA will also conduct training for trainers to facilitate effective use of this guide by child welfare workers.

CWLA's assessment instrument and decision-making guidelines for chemically-involved children and families will direct the vital first steps for child welfare professionals toward achieving increased safety to AOD-involved children and families. This instrument will not only outline a culturally competent, strengths-based substance abuse assessment tool, but also suggest new approaches to engaging families and addressing their needs. The casework, placement, and permanency planning options outlined in the guidelines will advance participatory decisionmaking models that result in family strengthening. Case plans that emphasize flexible options, encourage parents as partners in decisionmaking, involve extended family in caregiving, can promote the best interest of children and families.

Training and technical assistance to child welfare professionals supported by this agreement will help to develop innovative and effective approaches to meeting the needs of children in the child welfare system whose parents are AOD abusers. The activities funded by this agreement will focus on developing, expanding, or enhancing initiatives that raise public awareness and educate child welfare workers and policymakers on the most appropriate services for children of substance abusing parents to prevent these children and youth from becoming AOD abusers.

OJJDP funds would enable CWLA to produce a guidebook for top-level officials that describes current practices, models of innovation, and the policy choices faced in linking child welfare service agencies and their substance abuse counterparts. Also under consideration is increasing the number of sites in which CWLA would conduct training-of-trainer sessions from the four sites and 100 workers approved under the cooperative agreement, to eight sites and 200 workers.

This jointly funded project would be implemented by CWLA. No additional applications will be solicited in FY 1998.

Diffusion of State Risk- and Protective-Factor Focused Prevention

OJJDP is providing funds to the National Institute on Drug Abuse (NIDA), through an interagency agreement, to support this 5-year evaluation program. Fiscal year 1997 funds were used to begin this diffusion study of the natural history of the adoption, implementation, and effects of the public health approach to prevention, focusing on risk and protective factors for substance abuse at the State and community levels. The study seeks to identify phases and factors that influence the adoption of the public health approach and assess the association between the use of this approach for community prevention planning and the levels of risk and protective factors and substance abuse among adolescents.

The study will also examine State substance abuse data gathered from 1988 through 2001 and use key informant interviews conducted in 1997, 1999, and 2001 to identify and describe the process of implementing the epidemiological risk- and protective-factor approach in seven collaborating States: Colorado, Kansas, Illinois, Maine, Oregon, Utah, and Washington.

This project will be implemented by the current grantee, the Social Development Research Group at the University of Washington, School of Social Work. No additional applications will be solicited in FY 1998.

Multisite, Multimodal Treatment Study of Children With ADHD

OJJDP would provide funds under an interagency agreement with the National Institute of Mental Health (NIMH) to fund this study. OJJDP's participation in this NIMH-sponsored research is designed to enhance and expand the project to include analysis of justice

system contact on the part of the subjects. The study began in 1992, studying the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/hyperactivity disorder (ADHD). Originally funded for 5 years, this new round of funding would continue the six study sites for another 5 years, to 2003. Given this continuation, many of the children involved in the study will reach the age at which children normally begin antisocial behavior. To date, no extensive study has examined the relationship between delinquency and ADHD.

This expanded study, principally funded by NIMH, will follow the original study families and include a comparison group. With OJJDP support, the project sites are beginning to look at the subjects' delinquent behavior and legal system contact. This second funding cycle will include studies of substance use and antisocial behavior.

OJJDP would support this study through an interagency agreement with the National Institute of Mental Health. No additional applications would be solicited in FY 1998.

Evaluation of the Juvenile Mentoring Program

The overall goals of the Part G Juvenile Mentoring Program (JUMP) are the reduction of delinquency, gang participation, violence, and substance abuse and related behavior and the enhancement of educational opportunity, academic achievement, investments in school, and contribution to one's community. Translating these impact goals to outcome goals, the evaluation grantee will assess and measure the relative probability that JUMP mentees will reflect reductions in delinquency, gang participation, and associated negative behaviors and show improvements in school attendance, school completion, and academic performance.

The evaluation objectives include assessing and measuring the extent to which the quality of the mentor-mentee relationship generates attitudes, values, and intermediary behavior that increase the probability of the positive outcomes cited as goals. A second objective includes assessing and measuring the attributes of mentor characteristics and behaviors that contribute most to the attainment of mentee results. Other objectives include ensuring that the evaluation instrument is optimally designed, worded, and configured; providing ongoing assistance to JUMP program grantees; implementing quality assurance for raw data received from JUMP grantees and assuring proper entry into the management information data base; preparing appropriate data analysis for each JUMP grantee; generating analyses of site-specific findings; and preparing an aggregate analysis of implementation results and outcome data from all sites with special focus on attributable program effects and implications for replication.

This evaluation is being conducted by Information Technology International under a two-year grant that was competitively awarded in FY 1997. The primary focus of the initial award is the original 41 JUMP program sites. OJJDP anticipates extending the project period in FY 1998 for an additional 2 years in order to expand the ongoing evaluation to the 52 JUMP grants awarded to new sites in FY 1997. No additional applications will be solicited in FY 1998.

Truancy Reduction

Truancy often leads to dropping out of school, delinquency, and drug abuse. For many youth, truancy may be a first step to a lifetime of unemployment, crime, and incarceration.

OJJDP is considering engaging in a joint funding effort with the U.S. Department of Education to award competitive discretionary funds for jurisdictions to address the problem of truancy. OJJDP would be looking for school districts, under the leadership of their superintendents, to apply jointly with law enforcement or other juvenile justice system agencies to develop and implement a collaborative program designed to reduce truancy in their jurisdictions.

Arts and At-Risk Youth

The need for afterschool programs for youth at risk of delinquency is well-known. The opportunity to join an afterschool arts program that helps students develop their talents and abilities has been shown to help youth stay in school; receive higher grades; develop self-esteem; and resist peer pressure to engage in negative behaviors, such as substance and alcohol use, and other delinquent acts. Unfortunately, juveniles who are at greatest risk of delinquency are the ones who often have the least opportunity to join such programs because they are not available in their schools, neighborhoods, or communities. These youth have limited experiences both in the world of work and in job training skills. In addition, lack of conflict resolution skills makes it difficult for youth to retain jobs once they are employed because they are not well equipped to handle conflicts that may arise.

OJJDP is considering funding an afterschool and summer arts program that combines the arts with job training and conflict resolution skills. This project would include summer jobs or paid internships for youth so that they would be able to put into practice the job and conflict resolution skills they are learning. By combining the arts with practical life experiences, at-risk youth are able to gain valuable insights into their own abilities and the possibilities that await them in the world of work if they continue to attend school, study, and graduate.

OJJDP intends to explore the possibility of collaboration with the National Endowment for the Arts and the U.S. Department of Labor for this 2-year pilot project. OJJDP would award a competitive grant to develop a strategy based on research, provide technical assistance, implement an impact evaluation, and create reports on the strengths and weaknesses of the pilot program.

Community Volunteer Coordinator Program

OJJDP is considering funding the establishment of ''volunteer coordinators'' in a limited number of ongoing community-based initiative sites for the purpose of expanding the quality, sustainability, and number of safe and positive activities for young people during nonschool hours. Building on the work of the ''Presidents' Summit for America's Future,'' OJJDP would seek partnerships with other Federal agencies to provide grants to identified collaboratives that can demonstrate a clearly articulated plan for increasing volunteerism and representation from schools, law enforcement, city or county government, youth groups, and community-based organizations. The grants would support the hiring of an individual in the community who would be responsible for inventorying programs; planning; and recruiting, connecting, and training volunteers to participate in a range of programs that provide youth services (mentoring, tutoring, neighborhood restoration, counseling, recreational activities, mediation services, media outreach, and other forms of community service for youth).

Learning Disabilities Among Juveniles At-Risk of Delinquency or in the Juvenile Justice System

Some researchers have concluded that children who have difficulties in school often become frustrated because of constant failure. Studies have shown

that youth who have a learning disability (LD) are very likely to become truant or drop out of school rather than face the ridicule of their peers. The relationship between an LD and juvenile delinquency is complex.

A learning disability is a neurological condition that impedes a person's ability to store, process, or produce information. Learning disabilities can affect the ability to read, write, speak, or compute math and can impair socialization skills. Individuals with LD's are generally of average or above average intelligence, but the disability creates a gap between ability and performance.

School failure associated with learning disabilities is an important risk factor for juvenile delinquency. Whatever the presenting problem (e.g., abuse or neglect, truancy, or delinquency), a large percentage of children who come before the court have some specific learning disability that may have contributed, either directly or indirectly, to the behavior that led to their presence in court. A child with an LD is much more likely to come into contact with the juvenile justice system than one without an LD. The prevalence of LD in a population of juvenile delinquents is extremely high: approximately 35 percent of all children in the juvenile justice system have an identified LD.

To better address the needs of these youth, greater attention needs to be paid at a much younger age to the nature of learning disabilities, their impact on learning and the processing of information in and out of the classroom setting, and their relationship to dropping out and delinquency. Parents, schools, and the juvenile courts need to be more aware of this hidden handicap. These children could be helped if their disabilities were properly diagnosed and treated. Professionals who directly interact with the learning disabled need to share knowledge on how to identify and treat learning disabilities with juvenile justice system practitioners in order to reduce the number of system-involved juveniles who are learning disabled and to retain them in the education mainstream.

To address these critical issues, OJJDP is considering a joint initiative with the U.S. Department of Education's Office of Special Education and Rehabilitation Services. This initiative would include a planning component to develop a systemwide protocol to link appropriate agencies and professionals in the fields of education, juvenile and family courts, law enforcement, social services, juvenile justice system, and other systems that interact with LD youth.

The goals of this initiative would be: (1) To prevent the development of delinquency through early intervention, appropriate education, and other community-based services for students with an LD, and (2) to prevent recidivism by assuring that students with an LD in the juvenile justice system receive appropriate, specially designed instructional and social development skills and services that address their individual needs and that practitioners receive training on working with this population of offender.

Competitive grants would be awarded to support a planning and demonstration project that provides a systemwide protocol to address the issues surrounding learning disabilities and the link to delinquency both in schools and in the juvenile justice system that includes schools, education, juvenile and family courts, law enforcement, social services, juvenile justice system, and other directly or indirectly related fields. If this initiative is funded, OJJDP would also consider funding an evaluation of the demonstration project.

Advertising Campaign—Investing in Youth for a Safer Future

OJJDP proposes to continue its support of the National Crime Prevention Council's (NCPC's) ad campaign, ''Investing in Youth for A Safer Future,'' through the transfer of funds to the Bureau of Justice Assistance (BJA) under an Intra-agency Agreement. OJJDP and BJA are working with the NCPC Media Unit to produce, disseminate, and support effective public service advertising and related media that are designed to inform the public of effective solutions to juvenile crime and to motivate young people and adults to get involved and support these solutions. The featured solutions include effective prevention programs and intervention strategies.

The program would be administered by BJA through its existing grant to NCPC. No additional applications would be solicited in FY 1998.

Strengthening the Juvenile Justice System

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

In FY 1995, the National Council on Crime and Delinquency (NCCD) and Developmental Research and Programs, Inc. (DRP), completed Phases I and II of a collaborative effort to support the development and implementation of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. This effort involved assessing existing and previously researched programs in order to identify effective and promising programs that can be used in implementing the Comprehensive Strategy. A series of reports were combined into the *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.* The effort also included convening the forum ''Guaranteeing Safe Passage: A National Forum on Youth Violence,'' holding two regional training seminars for key leaders on implementing the Comprehensive Strategy, and disseminating the *Guide* at national conferences.

In FY 1996, Phase II work included two regional training seminars; the delivery of intensive training and technical assistance to three pilot sites—Lee County, Florida; Ducal County, Florida; and San Diego County, California; and the delivery of technical assistance to five States and selected local jurisdictions implementing the Comprehensive Strategy.

In FY 1997, the project continued its targeted dissemination of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders at several national conferences and additional regional training seminars and continued providing the five States with intensive training for implementing the Comprehensive Strategy, providing individualized technical assistance to individual jurisdictions interested in implementing the Comprehensive Strategy, and continuing developmental work on Comprehensive Strategy training materials.

In FY 1998, this project will continue the implementation efforts and expand to up to two additional States. In each of the new States, up to six jurisdictions will be identified to receive Comprehensive Strategy implementation training and technical assistance.

This project will be implemented by the current grantees, NCCD and DRP. No additional applications will be solicited in FY 1998.

Balanced and Restorative Justice Project (BARJ)

Based on research showing that properly structured restitution programs can reduce recidivism, OJJDP has supported development and improvement of juvenile restitution programs since 1977. The BARJ project sprang from OJJDP's RESTTA (Restitution, Education, Specialized Training, and Technical Assistance)

Project. In FY 1992, Florida Atlantic University (FAU) was awarded a competitive grant to enhance the development of restitution programs as part of systemwide juvenile justice improvement using balanced approach concepts and restorative justice principles. In subsequent years, the project developed a BARJ program model. The model was initially described in a 1994 OJJDP Program Summary entitled *Balanced and Restorative Justice*, which became a reference source for BARJ training.

The BARJ project currently provides intensive training, technical assistance, and guideline materials to three selected sites that over recent years have been implementing major systemic change in accordance with the BARJ model. The three sites are Allegheny County, Pennsylvania; Dakota County, Minnesota; and West Palm Beach County, Florida. In addition, the BARJ Project has continuously offered technical assistance and training to other jurisdictions nationwide. Project staff have also provided training at regional roundtables and at professional conferences dealing with juvenile justice system improvement. In 1997, the project published another reference document entitled *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century*. The project also compiled a *BARJ Implementation Guide*.

In FY 1998, the BARJ Project will produce additional reference and training materials and will offer further training and technical assistance.

This project will be implemented by the current grantee, FAU. No additional applications will be solicited in FY 1998.

Training and Technical Assistance Program To Promote Gender-Specific Programming for Female Juvenile Offenders

The 1992 Amendments to the Juvenile Justice and Delinquency Prevention Act addressed, for the first time, the issue of gender-specific services. The Amendments require States participating in the JJDP Act's Part B State Formula Grants program to conduct an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of services available, the need for such services, and a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency.

In FY 1995, OJJDP's Gender-Specific Services program focused on providing training and technical assistance directly to States and promoting the establishment of gender-specific programs at the State level. Training and technical assistance were provided to a broad spectrum of policymakers and service providers regarding services available for juvenile female offenders under direct grants, sponsorship of national conferences, and inclusion of a gender-specific service component in the OJJDP-funded comprehensive SafeFutures program.

In FY 1996, building upon these past efforts, OJJDP awarded a 3-year competitive grant to Greene, Peters and Associates (GPA) to provide a comprehensive framework for assisting policymakers, service providers, educators, parents, and the general public in addressing the complex needs of female adolescents who are at risk for delinquent behavior. The project's objectives are to develop and test a training curriculum for policymakers, advocacy organizations, and community-based youth-serving organizations that conveys the need for effective gender-specific programming for juvenile females and the elements of such programs; to develop, test, and deliver a technical assistance package on the development of gender-specific programs; to inventory female-specific programs, identifying those program models designed to build upon the gender-specific needs of girls and preparing a monograph suitable for national dissemination; to design and test a curriculum for line staff delivering services to juvenile females; to design and implement a public education initiative on the need for gender-specific programming for girls; and to design and conduct training for trainers. In FY 1997, the training curriculum for policymakers, advocacy organizations, and community leaders was developed and pilot-tested at three sites, and a final draft of the monograph was completed.

In FY 1998, GPA will develop a needs assessment for State Advisory Groups, develop a technical assistance package, and develop and test a curriculum for practitioners based on the monograph findings.

This program will be implemented by the current grantee, GPA. No additional applications will be solicited in FY 1998.

Juvenile Transfers to Criminal Court Studies

In FY 1995, OJJDP competitively awarded two extensive studies of the increasing juvenile transfer phenomenon. Most States have passed new legislation either permitting or requiring the transfer of alleged juvenile offenders to criminal court under certain circumstances. However, studies of the impact of criminal court prosecution of juveniles have yielded mixed conclusions. Solid research on the intended and unintended consequences of transfer of juveniles to criminal court will enable policymakers and legislatures to develop statutory provisions and policies and improve judicial and prosecutorial waiver and transfer decisions. Preliminary findings from these two studies (along with other efforts started over the past 2 years) have provided a wealth of information. The study undertaken in Florida has extensively examined the records of juveniles transferred to adult court along with similar juveniles who were not transferred, including case attribute information. Through this data collection, the research is bringing to light the differences in case handling and how these differences affect the outcome of the specific case. The differences in dispositions will naturally be a concern for many interested in the subject.

In FY 1998, OJJDP proposes to increase the understanding of the transfer issues by expanding the Florida study to include a greater number of cases and to include some basic recidivism measures. The Florida study has relied mainly on paper records for the case information. Such records require considerable time and effort to review. As such, the number of cases included in the first phase of this study was relatively small. Expansion of this study would allow the researchers to examine a greater number of cases in the a wider range of jurisdictions in Florida resulting in a greater understanding of the issue based on how the dynamics of jurisdictions may differ. Also, by expanding the tracking of the case subjects to include arrests and court cases following transfer to adult court, the researchers would provide insight on the recidivism that follows transfer of jurisdiction.

This project would be carried out by the current grantee, the Juvenile Justice Advisory Board of the State of Florida. No new applications would be solicited in FY 1998.

Replication and Extension of Fagan Transfer Study

The ''Comparative Impact of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders: A Replication and Extension'' project will continue in FY 1998, building on the past work of Dr. Jeffrey Fagan. In FY 1997, OJJDP awarded a two-year project period grant to Columbia University to build on Dr. Fagan's seminal study of 1986 transfers

in New York and New Jersey. The earlier study was the first of its kind to compare four contiguous counties with similar social, economic, and criminogenic factors and offender cohorts with essentially identical offense profiles. It was also the first such study to go beyond comparing sentences to studying the deterrent effects of the sanction and court jurisdiction on recidivism rates in juvenile versus criminal court.

The replication and extension research project will be able to answer questions about how case processing decisions have changed in the last decade. The new study will compare case attribute information and case dispositional outcomes in 1981–82 with those cases processed in 1993–94, a time period following sustained growth in the rates of youth violence. In addition, a study component under the direction of Dr. Barry Feld will explore whether there are factors being considered by prosecutors, judges, and defense attorneys that explain the variation in sentences/dispositions and recidivism between groups of offenders handled in different systems. This component will provide an analysis of the organizational, contextual, or systemic factors involved in the decision processes affecting both jurisdiction and punishment. The study will also conduct interviews with selected offenders processed in different systems to gain a perspective on the impact of criminal versus juvenile system handling of such cases on further experiences with the justice system. The project will also collaborate with the other research conducted under OJJDP's Juvenile Transfers to Criminal Court Studies program in sharing data collection instruments and in planning appropriate joint analyses.

This project will be implemented by the current grantee, Columbia University. No additional applications will be solicited in FY 1998.

The Juvenile Justice Prosecution Unit

OJJDP has historically supported prosecutor training through the National District Attorneys Association (NDAA). This training has increased the involvement and leadership of elected and appointed prosecutors in juvenile justice systems issues, programs, and services. To continue that progress, OJJDP funded a 3-year project period grant in FY 1996 to the American Prosecutors Research Institute (APRI), the research and technical assistance affiliate of NDAA, to promote prosecutor training. Under this award, APRI established a Juvenile Justice Prosecution Unit (JJPU). The JJPU holds workshops on juvenile-related policy, leadership, and management for chief prosecutors and juvenile unit chiefs and also provides prosecutors with background information on juvenile justice issues, programs, training, and technical assistance.

The project solicits planning and other advisory input from prosecutors familiar with juvenile justice system and prosecutor needs. It draws on the expertise of working groups of elected or appointed prosecutors and juvenile unit chiefs to support project staff in providing technical assistance, juvenile justice-related research, program information, and training to practitioners nationwide. In FY 1997, for example, APRI held two executive seminars for prosecutors and sponsored a National Invitational Symposium on Juvenile Justice. The Symposium provided a forum for prosecutors to exchange ideas on programs, issues, legislation, and practices in juvenile justice. APRI has also produced materials focused on juvenile prosecution-related issues for the benefit of prosecutors nationally.

In FY 1998, APRI will present additional workshops and seminars and will develop new reference materials for prosecutors. Documents expected to be developed include a compendium of juvenile justice programs conducted by prosecutors offices, technical assistance packages related to significant juvenile justice programs and issues of interest to prosecutors, and newsletters updating developments in the juvenile prosecution field.

This project will be implemented by the current grantee, APRI. No additional applications will be solicited in FY 1998.

Due Process Advocacy Program Development

In FY 1993, OJJDP competitively funded the American Bar Association (ABA) to determine the status of juvenile defense services in the United States, develop a report, and then develop training and technical assistance. The ABA— along with its partners, the Youth Law Center of San Francisco, California, and the Juvenile Law Center of Philadelphia, Pennsylvania—conducted an extensive survey of public defender offices, court-appointed systems, law school clinics, and the literature. These data were then analyzed and a report, entitled *A Call for Justice,* was developed and published in December 1995.

The ABA has also developed and delivered specialized training to juvenile defenders in several jurisdictions, such as the State of Maryland, the State of Tennessee, Baltimore County, Maryland, and several other States and localities, to assist in increasing the capacity of juvenile defenders to provide more effective defense services. In October 1997, the ABA and its partners organized and implemented the first Juvenile Defender Summit at Northwestern University in Chicago, Illinois. The Summit brought together public defenders, court-appointed lawyers, law school clinic directors, juvenile offender services representatives, and others for a 2½-day meeting to examine the issues related to juvenile defense services and recommend strategies for improving these services. A report is forthcoming on the Summit and the recommendations that emerged from the seven working groups.

OJJDP is proposing to fund a Juvenile Defender Training, Technical Assistance, and Resource Center in FY 1998 (discussed under New Programs). However, the Center will not be funded until later in FY 1998 and probably will not be operational until early FY 1999. To ensure that training and technical assistance continue in the interim and into 1999 and to provide for the transition to the new Juvenile Defender Center, OJJDP proposes to continue the Due Process Advocacy grant for an additional year.

This project would be implemented by the current grantee, the American Bar Association. No new applications would be solicited in FY 1998.

Quantum Opportunities Program (QOP) Evaluation

In FY 1997, OJJDP funded an impact evaluation of the Quantum Opportunities Program (QOP)through an interagency fund transfer to the U.S. Department of Labor (DOL). QOP was designed by the Ford Foundation and Opportunities Industrialization Centers of America as a career enrichment program using a model providing basic education. Personal and cultural development, community service, and mentoring. The purpose of the OJJDP funding for the evaluation is to determine whether QOP reduces the likelihood that inner-city youth at educational risk will enter the criminal justice system, including the juvenile justice system. The QOP impact evaluation is designed to measure the impact of QOP participation on such outcomes as high school graduation and enrollment in postsecondary education and training. Other student outcomes to be examined include academic achievement in high school; misbehavior in school; self-esteem and

sense of control over one's life; educational and career goals; and personal decisions such as teenage parenthood, substance abuse, and criminal activity. Data on criminal activity is being collected from individual student interviews.

In FY 1998, OJJDP proposes to continue this evaluation enhancement to the DOL-funded evaluation to provide for the collection of analogous data from the juvenile justice system, thus allowing estimates of the impact of the QOP program on the likelihood of program youth becoming involved in the criminal justice system. Attention would be focused on identifying the appropriate governmental agencies responsible for the data, dealing with confidentiality requirements, determining the feasibility of collecting such information, preparing data collection protocols for each site, and preparing a report outlining the data collection design for implementation.

This program would be implemented through an interagency agreement with the U.S. Department of Labor. No additional applications would be solicited in FY 1998.

Intensive Community-Based Aftercare Demonstration and Technical Assistance Program

This initiative is designed to support implementation, training and technical assistance, and an independent evaluation of an intensive community-based aftercare model in four jurisdictions that were competitively selected to participate in this demonstration program. The overall goal of the intensive aftercare model is to identify and assist high-risk juvenile offenders to make a gradual transition from secure confinement back into the community. The Intensive Aftercare Program (IAP) model can be viewed as having three distinct, yet overlapping segments: (1) Prerelease and preparatory planning activities during incarceration; (2) structured transitioning involving the participation of institutional and aftercare staffs both prior to and following community reentry; and (3) long-term reintegrative activities to ensure adequate service delivery and the required level of social control.

In FY 1995, the Johns Hopkins University received a competitively awarded 3-year grant to test its intensive community-based aftercare model in four demonstration sites: Denver (Metro area), Colorado; Clark County (Las Vegas), Nevada; Camden and Newark, New Jersey; and Norfolk, Virginia.

The Johns Hopkins University has contracted with California State University at Sacramento to assist in the implementation process by providing training and technical assistance and by making OJJDP funds available through contracts to each of the four demonstration sites.

Each of the sites developed risk assessment instruments for use in selecting high-risk youth who need this type of intensive aftercare, hired and trained staff in the intensive aftercare model, identified existing and needed community support (intervention) services, and identified and collected data necessary for the independent evaluation of the intensive community-based aftercare program. In accordance with a strong experimental research design, each of the sites uses a system of random assignment of clients to the program.

The Johns Hopkins University and California State University at Sacramento have provided continuing training and technical assistance to administrators, managers, and line staff at the intensive community-based aftercare sites. Staff have been fully trained in the theoretical underpinnings of the IAP model and in its practical applications, such as techniques for identifying juveniles appropriate for the program. Training and technical assistance in this model have also been made available to other States and OJJDP grantees on a limited basis.

This effort is the first attempt to implement an intensive, integrated approach to aftercare with the necessary transition and reentry components. One more year of program operation and data collection would provide the information and data needed for analysis of the effectiveness of the IAP model. The National Council on Crime and Delinquency is performing an evaluation under a separate grant.

In FY 1998, OJJDP proposes to provide a fourth year of funding to the Johns Hopkins University to provide ongoing training and technical assistance to the four selected sites and also provide aftercare technical assistance services to jurisdictions participating in the OJJDP/Department of the Interior Youth Environmental Service (YES) initiative, OJJDP's six SafeFutures program sites, and other programs, including the New York State Division for Youth's Youth Leadership Academy in Albany, New York. In addition, the grantee would work with three other States (Arkansas, New York, and Washington) that plan to implement the IAP model with State funds.

The IAP project would be implemented by the current grantee, the Johns Hopkins University. No additional applications would be solicited in FY 1998.

Evaluation of the Intensive Community-Based Aftercare Program

In FY 1995, OJJDP competitively awarded a 3-year grant to the National Council on Crime and Delinquency (NCCD) to perform a process evaluation and design an outcome evaluation of the Intensive Community-Based Aftercare Demonstration and Technical Assistance program. In FY 1997, the project was extended an additional year to begin the outcome evaluation.

The purpose of the outcome evaluation is to answer the following key research questions: (1) To what extent is the nature of supervision and services provided Intensive Community-Based Aftercare Program (IAP) youth different from that given to ''regular'' parolees? (2) To what extent does IAP have an impact on the subsequent delinquent or criminal involvement of program participants? (3) To what extent does the IAP have an impact on the specific areas of youth functioning that it targets for intervention? These intermediate outcomes include, for example, reduction of substance abuse, improved family functioning, improved peer relationships, improved self-concept, and reduced delinquent or criminal behavior. (4) To what extent is IAP cost-effective?

To obtain the answers to these questions, NCCD is (1) Using a true experimental design that will involve random assignment of IAP-eligible youth to either the experimental or control conditions; (2) using a series of measures to compare differences between the two groups in terms of services delivered, pre/post changes in selected areas of youth functioning, and the extent and nature of recidivism; and (3) estimating the per-participant costs for the IAP and control groups.

Data collection is being accomplished using several methods, including use of a series of forms developed to capture data on youth and program characteristics and a battery of standardized testing instruments administered before and after institutional commitment and IAP to measure the changes in youth functioning. The grantee is also conducting searches of State agency and State police records to measure recidivism and analyzing State agency and juvenile court data to estimate costs.

This project will be implemented by the current grantee, NCCD. No additional applications will be solicited in FY 1998.

Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (the Deborah Ann Wysinger Memorial Program)

National data and studies have shown that minority children are overrepresented in secure juvenile and criminal justice facilities across the country. Since the 1988 reauthorization of the JJDP Act, State Formula Grants program plans have addressed the disproportionate confinement of minority juveniles. This is accomplished by gathering and analyzing data to determine whether minority juveniles are disproportionately confined and, if so, designing strategies to address this issue. A competitive Special Emphasis discretionary grant program was developed in FY 1991 to demonstrate model approaches to addressing disproportionate minority confinement (DMC) in five State pilot sites (Arizona, Florida, Iowa, North Carolina, and Oregon). Funds were also awarded to a national contractor to provide technical assistance to assist both the pilot sites and other States, evaluate their efforts, and share relevant information.

In FY's 1994 and 1995, OJJDP made additional Special Emphasis discretionary funds available to nonpilot States that had completed data gathering and assessment in order to provide initial funding for innovative projects designed to address DMC.

These efforts to address DMC have yielded an important lesson: that systemic, broad-based interventions are necessary to address the issue. In recognition of the continued need to improve the ability of States and local jurisdictions to address DMC, OJJDP issued a competitive solicitation in FY 1997 for innovative proposals to implement a 3-year national training, technical assistance, and information dissemination initiative focused on the disproportionate confinement of minority youth.

In FY 1997, through a competitive selection process, OJJDP awarded a 3-year contract to implement the DMC training program to Cygnus Corporation, Inc. Project objectives for the first year were: (1) To disseminate to States, localities, OJJDP staff, and key OJJDP grantees a review and synthesis of the existing knowledge base and research on DMC that includes State and local practices designed to address DMC; (2) to develop a training curriculum for policymakers, decisionmakers, and practitioners in the juvenile justice system; (3) to develop and deliver technical assistance to OJJDP grantees and to incorporate DMC issues, practices, and policies; (4) to develop and begin the process of assisting DMC grantees to implement and institutionalize their DMC programs; (5) to collaborate with OJJDP's Formula Grants program technical assistance contractor, Community Research Associates, and OJJDP staff to help States improve their DMC compliance plans and their strategic planning as it addresses DMC; (6) to plan, develop, and implement a national dissemination and education effort to facilitate development of effective DMC efforts at the State and local levels; and (7) to convene an advisory group to support the project team on current DMC policy, practice and progress.

This project will be implemented by the current grantee, Cygnus Corporation, Inc. No additional applications will be solicited in FY 1998.

Juvenile Probation Survey Research

OJJDP will continue its effort to track nonresidential probation. This project complements OJJDP's program to statistically track juveniles in residential custody. Experience has shown that in order to understand fully the dynamics and characteristics of residential placement, it is necessary also to understand the dynamics of nonresidential sanctions. To that end, the Office began a program to monitor the most important, most salient attributes of juvenile probation. Work to date has involved enhancing our understanding of the structure of juvenile probation and the most important response level. The project has tracked the types of juvenile probation offices in operation and has to catalog these offices. From this catalog, OJJDP will develop an effective and complete frame for conducting either surveys or censuses.

In 1996, OJJDP convened a meeting of probation practitioners and researchers in the area of probation to fully discuss the issues of probation and the most important statistics a national reporting program should provide. The information and ideas from this meeting yielded a broad and important set of statistical needs to inform the future of juvenile probation. Among the issues identified are the effectiveness of probation, the costs of probation, and the most appropriate population for probation. Each issue will be explored in this project to determine how best to capture the information. The combination of statistical and research projects will be determined in conjunction with the development of this survey.

In FY 1997, the project focused on development of a complete list of juvenile probation offices, including suboffices and head offices. This information will prove vital when determining the specific response level that will give the desired level of information. For example, should OJJDP determine to gather information on each probation officer, a survey of head offices may suffice. However, if OJJDP proposes to collect information on each juvenile probationer, a survey all suboffices may be necessary. Also in FY 1997, OJJDP and the Bureau of the Census continued background work to develop the questionnaire to be used for this survey. The specifics of the questionnaire will depend upon the resolution of several important methodological aspects.

The project will be implemented in FY 1998 through an interagency agreement with the Bureau of the Census. No additional applications will be solicited in FY 1998.

Training for Juvenile Corrections and Detention Management Staff

This training program for juvenile corrections and detention management staff began in FY 1991 under a 3-year interagency agreement with the National Institute of Corrections (NIC). The program offers a core curriculum for juvenile corrections and detention administrators and midlevel management personnel in such areas as leadership development, management, training of trainers, legal issues, cultural diversity, the role of the victim in juvenile corrections, juvenile programming for specialized-need offenders, and managing the violent or disruptive offender. Because of the continuing need for the executive level training NIC provides, the agreement was renewed for an additional 3-year term in FY 1994 and renewed again in FY 1997 for a 2-year term. In FY 1997, NIC conducted 8 training seminars, 2 workshops, 1 satellite video conference and made 14 technical assistance awards, reaching more than 6,000 participants.

In FY 1998, OJJDP will continue to support the development and implementation of a comprehensive training program for juvenile corrections and detention management staff through the interagency agreement with NIC. It is anticipated that in FY 1998 the project will provide 6 seminars to more than 150 executives and management staff and technical assistance related to training to a number of juvenile corrections and detention agencies. The training is conducted at the NIC Academy and regionally.

The program will be implemented by the current grantee, NIC. No additional applications will be solicited in FY 1998.

Training for Line Staff in Juvenile Detention and Corrections

Training is a cost-effective tool for helping to improve conditions of confinement and services for youth detained or confined in residential facilities. In FY 1994, the National Juvenile Detention Association (NJDA) was awarded a competitive 3-year project period grant to establish a training program to meet the needs of the more than 38,000 line staff serving juvenile detention and corrections facilities. In FY 1995 and FY 1996, NJDA developed eight training curriculums, including a corrections careworker curriculum and a train-the-trainer curriculum. In addition, NJDA conducted 42 separate trainings, developed lesson plans, and provided technical assistance to juvenile justice agencies.

In FY 1997, NJDA was funded to provide training and technical assistance services to State agencies and organizations in 16 States, assist regional groups and local organizations, directly train nearly 700 line staff, and respond to telephone requests for technical assistance services. NJDA also established Web site connections with OJJDP, the American Correctional Association, and other organizations. A community college in Michigan is adapting two of the NJDA curriculums, Juvenile Detention Careworker Curriculum and Juvenile Corrections Careworker Curriculum, for academic credit.

In FY 1998, OJJDP proposes to award continuation funding to NJDA. In formal partnership with the National Association of Juvenile Correctional Agencies, Juvenile Justice Trainers Association, and the School of Criminal Justice at Michigan State University, NJDA proposes that FY 1998 goals include the continuing delivery of line staff training and technical assistance, conducting training evaluation in conjunction with the newly developed National Training and Technical Assistance Center (NTTAC) protocols, providing pilot training for trainers, developing action plans for two new curriculums, drafting line staff professional development models, and disseminating training materials and services through the NTTAC and the Internet.

This project would be implemented by the current grantee, NJDA. No additional applications would be solicited in FY 1998.

Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

The *Conditions of Confinement: Juvenile Detention and Correctional Facilities* Research Report (1994), completed by Abt Associates under an OJJDP grant, identified overcrowding as the most urgent problem facing juvenile corrections and detention facilities. Overcrowding in juvenile facilities is a function of decisions and policies made at the State and local levels. The trend toward increased use of detention and commitment to State facilities, which has been seen in many jurisdictions, has been reversed when key decisionmakers, such as the chief judge, chief of police, director of the local detention facility, head of the State juvenile correctional agency, and others who affect the flow of juveniles through the system, agree to make decisions collaboratively and modify existing practices and policies. In some instances, modification has occurred in response to court orders. Compliance with court orders can be improved with the support of enhanced interagency communication and planning among those agencies impacting the flow of juveniles through the system.

In addressing the problem of overcrowded facilities, OJJDP considered the recommendations of the Conditions of Confinement study regarding overcrowding, the data on overrepresentation of minority youth in confinement, and other information that suggests crowding in juvenile facilities is a national problem. Policymakers can address this issue by increasing capacity, where necessary, or by taking other steps to control crowding.

This project, competitively awarded to the National Juvenile Detention Association (NJDA) (in partnership with the San Francisco Youth Law Center) in FY 1994 for a 3-year project period, provides training and technical assistance materials for use by State and local jurisdictional teams. After information collection and preparation of training and technical assistance materials in FY's 1994 and 1995, NJDA selected three jurisdictions in FY 1996 for onsite development, implementation, and testing of procedures to reduce crowding. The sites are Camden, New Jersey; Oklahoma City, Oklahoma; and the Rhode Island Juvenile Corrections System. In FY 1997, project accomplishments included the following: (1) Development of a resource guide, *Juvenile Detention and Training School Crowding: Court Case Summaries,* and a training tool, ''Crowding in Juvenile Detention Centers: A Problem-Solving Manual'' (in draft); (2) delivery of comprehensive technical assistance to two detention centers and limited technical assistance to two State juvenile corrections systems; and (3) training presentations to the National Council of Juvenile and Family Court Judges and other groups.

In FY 1998, OJJDP proposes to award continuation funding to NJDA to continue efforts to reduce overcrowding in facilities where juveniles are held, through systemic change within local juvenile detention systems or statewide juvenile corrections systems. Among the specific activities proposed for FY 1998 are: (1) Publication of a special edition of the NJDA *Journal for Juvenile Justice and Detention* focused exclusively on jurisdictional teamwork to reduce overcrowding in juvenile detention and corrections (jurisdictional teams consist of designated NJDA/Youth Law Center project staff working with key juvenile justice officials in the sites selected for technical assistance); (2) completion of a strategy to deliver comprehensive technical assistance to the Nebraska Health and Human Services Agency; (3) identification of additional sites for comprehensive training and technical assistance; (4) development of a desktop guide on juvenile facility overcrowding; (5) further refinement of the jurisdictional team training and technical assistance package; (6) development of a national videoconference on crowding issues; (7) education and information dissemination to the juvenile justice community; and (8) exploration of public/private partnerships.

This project would be implemented by the current grantee, NJDA. No additional applications would be solicited in FY 1998.

National Program Directory

In FY 1998, OJJDP proposes to support the maintenance of this directory that identifies and categorizes juvenile justice agencies, facilities, and programs in the United States to allow for routine statistical data collections covering these agencies and programs. The directory project has developed lists of juvenile detention, correctional, and shelter facilities. This list, which includes all public and private facilities that can hold juveniles who are in the juvenile justice system in a residential setting (i.e., with sleeping, eating, and other necessary facilities), has served as the frame for OJJDP's Census of Juveniles in Residential Placement and would serve as the frame for OJJDP's Juvenile Residential Facility Census.

The directory project has also begun development of a list of juvenile probation offices to serve as the frame for OJJDP's Survey of Juvenile Probation.

Beyond developing the computer structure, this project developed the actual sampling frame or address list. The development of complete frames for any segment of the juvenile justice system required many different approaches. The Census Bureau used contacts with professional organizations to compile a preliminary list of juvenile facilities, courts, probation offices, and programs. The Census Bureau will seek contacts in each State for further clarification of the lists, following up until a complete list of all programs of interest has been compiled.

This program would be continued in FY 1998 through an interagency agreement with the Census Bureau. No additional applications would be solicited in FY 1998.

Juvenile Sex Offender Typology

The juvenile justice system has struggled to address issues related to juvenile sex offenders' dangerousness, the most appropriate level of placement restrictiveness, the potential for rehabilitation, assessment requirements, and intervention needs. Efforts to effectively address these issues have been hampered by the lack of an empirically based system for classifying this heterogeneous population into meaningful subgroups. To respond to this need, OJJDP competitively awarded FY 1997 funding to two feasibility studies, one being conducted by the University of Illinois-Springfield, the other by Health Related Research. Each study is designed to determine the specific methodologies best suited to generate an empirically validated typology of the juvenile sex offender. The work on these grants will begin early in FY 1998. Based on the results of these initial studies, OJJDP will determine how best to support the development of the typology.

These studies will be implemented by the current grantees, University of Illinois—Springfield and Health Related Research. No additional applications will be solicited in FY 1998.

Interagency Programs on Mental Health and Juvenile Justice

In October 1996, OJJDP convened a Mental Health/Juvenile Justice Working Group to discuss the mental health needs of juveniles and to suggest funding priorities for OJJDP. In the 1997 program planning process, OJJDP determined that with the minimal resources available it would be cost effective to support several ongoing programs funded by other Federal agencies that were consistent with the recommended areas of activity. OJJDP therefore transferred funds to three Federal agencies to support the enhancement of juvenile justice components or research on at-risk youth in the mental health area.

First, OJJDP transferred funds to the Center for Mental Health Services (CMHS), U.S. Department of Health and Human Services, to support a 3-year effort to provide technical assistance to the 31 existing CMHS Child Mental Health sites. The project period began on October 1, 1997, and will end on September 30, 2000. These funds will be used to strengthen the capacity of the existing sites by providing technical assistance on mental health services for juveniles in the juvenile justice system and by including them in the continuum of care that is being created in the sites.

OJJDP also transferred funds to the National Institute of Corrections (NIC), which, along with the Substance Abuse and Mental Health Services Administration, supports a program to provide technical assistance with regard to programming and services for juvenile offenders with co-occurring disorders. This is also a 3-year project period that began on October 1, 1997, and will end on September 30, 2000. NIC will supplement the existing technical assistance provider, the GAINS Center, to enable it to devote technical assistance resources to support improved treatment and services programs for juvenile offenders with co-occurring disorders in the juvenile justice system. Previously, the focus of the grant had been on the provision of technical assistance to the adult system.

Finally, OJJDP transferred funds to the National Institute of Mental Health (NIMH) to partially support additional costs associated with the conduct of an expanded and extended followup study of various treatment modalities for attention deficit hyperactive disorder (ADHD) in children. The expanded followup will assess substance abuse and use and related factors necessary for evaluating changes in ADHD children's risk for subsequent substance use and abuse attributable to their randomly assigned treatment conditions. In addition, the multimodal treatment study of children with ADHD affords the opportunity to assess the experience of study participants with the legal system, e.g., contacts with the juvenile justice system, acts of delinquency, court referrals, and other criminal and/or precriminal activities.

In FY 1998, OJJDP will transfer additional funds to support continuation of the NIC and CMHS technical assistance and the training and research of NIMH. No new applications will be solicited in FY 1998.

Juvenile Residential Facility Census

In 1998, OJJDP proposes to continue to fund the development and testing of a new census of juvenile residential facilities. This census would focus on those facilities that are authorized to hold juveniles based on contact with the juvenile justice system. During FY 1997, the project conducted an extensive series of interviews with facility administrators and facility staff onsite at 20 locations. The subjects covered in these interviews included education, mental health and substance abuse treatment, health services, conditions of custody, staffing, and facility capacity. From these interviews, the project staff have produced an extensive and detailed report for OJJDP discussing how best to capture information on these topics and has produced a draft questionnaire based on these results.

In FY 1998, the project staff would refine the draft instrument and test it through a series of cognitive interviews onsite at approximately 25 facilities. After another round of revision and comment, the questionnaire would be tested for feasibility by conducting a sample survey of 500 facilities. Again, the questionnaire would go through a round of revision based on the test results before being finalized.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No new applications would be solicited in FY 1998.

The National Longitudinal Survey of Youth 97

OJJDP proposes to support the second round of data collection under the National Longitudinal Survey of Youth 97 (NLSY97) through an interagency agreement with the Bureau of Labor Statistics (BLS). In 1994, BLS began its design and development work for a new National Longitudinal Survey of Youth, similar to the ongoing National Longitudinal Survey of Youth 1979. Under the NLSY97, a nationally representative sample of 10,000 youth ages 12 to 17 years old was selected in order to study the school-to-work transition. However, BLS has acknowledged the importance of collecting additional data on the involvement of these youth in antisocial and other behavior that may affect their

successful transition to productive work careers.

The breadth of topics covered by this survey provides a rich and complementary source of information about risk and protective factors that are also related to the initiation, persistence and desistance of delinquent and criminal behavior. This interagency agreement supplements the data collection by asking questions about delinquency, guns, drug sales, and violent behavior. In addition to generating the first national, cross sectional, estimates of self-reported delinquency since the late National Youth Survey of the early 1980's, this new longitudinal survey would also provide an opportunity to determine the generalizability of the findings from OJJDP's Program of Research on the Causes and Correlates of Delinquency and other city-specific longitudinal studies across a nationally representative population of youth.

The program would be implemented by the BLS under an interagency agreement. No additional applications would be solicited in FY 1998.

National Academy of Sciences Study of Juvenile Justice

The growth of violent juvenile crime from the latter half of the 1980's to the mid-1990's created public anxiety and fueled debate about the viability and effectiveness of this Nation's juvenile justice system. This growing concern has led many States in recent years to move away from rehabilitation and move toward deterrence and punishment as primary objectives of their juvenile justice systems.

In FY 1997, OJJDP initiated support for a 2-year study by the National Academy of Sciences to examine research on the functioning of the juvenile justice system over the past 10 years in the areas of delinquency prevention and control. The purpose of this extensive review is to provide a scientifically sound basis for planning a multidisciplinary, multiagency agenda for research that not only informs policymakers and practitioners about the nature and extent of juvenile delinquency and violence but also identifies the most effective strategies for preventing and reducing youth crime and violence.

Issues of interest to the study include: (1) An assessment of the status of research into youth violence, methodological approaches to evaluate the effectiveness of youth violence prevention efforts, and the efficacy of Federal, State, and local efforts to control youth violence; (2) a review of research literature and data on juvenile court practices during this period, including the experience with Federal requirements regarding status offenders, detention practices, and the impact of diversion strategies and waivers to criminal court for certain offenders and offenses; (3) a review of research literature and data on clients in the juvenile justice system including concerns regarding disproportionate minority confinement and gender equity; (4) an assessment of available evaluation literature on system programs and prevention strategies and programs including identification of gaps in the research and recommendations to strengthen it; and (5) the relationship between the research on the causes and correlates of juvenile delinquency and normal adolescent growth and development.

A project report, synthesizing materials gathered from discussions and papers presented at workshops and expert panel meetings, will provide an overview of the critical issues confronting the juvenile justice field, gaps in current knowledge base, and future directions for research and program development.

This program will be implemented by the current grantee, the National Academy of Sciences. No additional applications will be solicited in FY 1998.

TeenSupreme Career Preparation Initiative

In FY 1998, OJJDP, in partnership with the U.S. Department of Labor's (DOL's) Employment and Training Administration, will provide funding support to the Boys and Girls Clubs of America for demonstration and evaluation of the TeenSupreme Career Preparation Initiative. DOL will provide $2.5 million to support the program, and OJJDP would provide $250,000 to support the initial costs of the evaluation. This initiative will provide employment training and other related services to at-risk youth through local Boys and Girls Clubs with TeenSupreme Centers. The Boys and Girls Clubs of America currently has 41 TeenSupreme Centers in local clubs around the country and may consider expanding the number of centers in 1998. DOL funds will support program staffing in the existing 41 TeenSupreme Centers and provide intensive training and technical assistance to each site. These funds will also be used by the Boys and Girls Clubs of America to provide administrative and staffing support to this program from the national office. OJJDP funds would be used to support the evaluation component of the program. Boys and Girls Clubs of America would contract with an independent evaluator to evaluate the program.

This jointly funded Department of Labor and OJJDP initiative would be implemented by the Boys and Girls Clubs of America. No additional applications would be solicited in FY 1998.

Technical Assistance to Native Americans

Native American programs for juveniles are facing increasing pressures because of the growing number of youth who are involved in drug abuse, gang activity, and delinquency. Many reservations are experiencing the problems that plague communities nationwide: gang activity, violent crime, use of weapons, and increasing drug and alcohol abuse.

From FY 1992 to FY 1995, OJJDP funded four Native American sites to support the development of community-based programs to deal with these problems. These sites were the Gila River Indian Community in Arizona; the Navajo Nation Chinle District in Arizona; the Red Lake Ojibwe in Minnesota; and the Pueblo of Jemez in New Mexico. Each of these communities implemented programs specifically designed to meet the needs of the tribe. For example, in Gila River, an alternative school was developed and implemented. The Navajo Nation expanded the Peace Maker program to accommodate additional delinquent offenders, an approach that was adopted by the Red Lake and Pueblo Jemez communities. Additional programming, such as job skills development, was also initiated in some of these communities to meet the needs of tribal youth. Although these programs were well received, the sites also needed to expand programming options such as gang and drug prevention and intervention programs.

In FY 1997, American Indian Development Associates (AIDA) was selected to implement OJJDP's national technical assistance program for tribes and urban tribal programs across the country. This 3-year program will support the development of additional program options for the four tribes previously funded and extend technical assistance to tribal communities and urban tribal programs nationwide. AIDA initially developed a needs assessment instrument and provided other technical assistance to Juvenile Detention Facilities in Indian Country under an agreement to support the Office of Justice Programs (OJP) Corrections Program Office's project with the Gila River and Yankton Tribes. AIDA also

facilitated team learning activities during the Arizona Indian Youth Gang Prevention Conference, coordinated the First Native American Juvenile Justice Summit, and provided technical assistance to Indian tribes on behalf of OJJDP, the Office of Tribal Justice, and the OJP Indian Desk.

In FY 1998, AIDA will continue to provide technical assistance to Native American and Alaskan Native communities. Technical assistance will enable the tribes to further develop alternatives to detention, specifically targeting juveniles who are first or nonviolent offenders; design guidebooks for the tribal peacemaking process to be used in addressing juvenile delinquency issues that are reported to Family District Court systems; design and implement juvenile justice needs assessments to assist tribes in responding to juvenile detention and alternatives to detention needs; develop protocols to implement State Children's Code provisions that affect Native American Children; establish sustainable, comprehensive community-based planning processes that focus on the needs of tribal youth; plan and conduct juvenile justice training seminars; and assist John Jay College of Criminal Justice to design and develop a Tribal Justice Training and Technical Assistance Workshop under OJJDP's Law Enforcement Training Contract. The workshop will emphasize juvenile probation, serious habitual offenders, and tribal youth gangs.

This program will be implemented by the current grantee, American Indian Development Associates. No additional applications will be solicited in FY 1998.

Training and Technical Assistance To Promote Teen Court Programs

OJJDP considers teen courts, also called peer or youth courts, to be a promising mechanism for holding juvenile offenders accountable for their actions while promoting avenues for positive youth development. Teen courts are included as a promising early intervention program in OJJDP's *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.*

To encourage the use of teen court programs to address problems associated with delinquency, substance abuse, and traffic safety, OJJDP provided funding in FY 1996 to supplement the existing Teen Court Program of the National Highway Traffic Safety Administration (NHTSA), of the U.S. Department of Transportation. The NHTSA grant was awarded in FY 1994 for a 3-year project period to the American Probation and Parole Association (APPA) to develop a teen court guide and provide training and technical assistance to develop or enhance teen court programs. This NHTSA grant was supplemented with OJJDP FY 1996 and FY 1997 funds to support the development of the joint publication *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs* and to provide an expanded technical assistance capacity.

The national response to APPA's training and technical assistance and to the Guide has been very enthusiastic. A second printing of the Guide will be available by April 1998. NHTSA and OJJDP have received numerous requests to provide additional training seminars and technical assistance based on the Guide.

In FY 1998, OJJDP is considering further collaboration with NHTSA, HHS, and other interested agencies, to enhance the training seminars with information on the possibility of teen courts being used as an integral part of balanced and restorative justice initiatives and to help address the growing problem of children who are being suspended and expelled from school because of misbehavior, including misbehavior related to learning problems. These activities would complement current training on the use of teen courts to address youth possession and use of alcohol and marijuana, issues of particular interest to these agencies. Technical assistance would be provided to selected jurisdictions with site-specific strategic planning for the program organizers on developing, implementing, or enhancing teen court programs, particularly in school-related areas. To be eligible for technical assistance, recipients would need to have completed a teen court training seminar. OJJDP would award a competitive grant to implement a 3-year program.

Training and Technical Assistance Coordination for SafeFutures Initiative

OJJDP is considering providing funding for long-term training and technical assistance (TA) for the remaining 3 years of the SafeFutures initiative. The purpose of this TA effort would be to build local capacity for implementing and sustaining effective continuum of care and systems change approaches to preventing and controlling juvenile violence and delinquency in the six SafeFutures communities.

Project activities would include assessment, identification, and coordination of the implementation of training and TA needs at each SafeFutures site and administration of cross-site training.

School Safety

Since 1984, OJJDP and the U.S. Department of Education have provided joint funding to a national organization to promote safe schools—free of crime and violence through training and technical assistance and the dissemination of information. This initiative has focused national attention on cooperative solutions to problems that disrupt the educational process. Because an estimated 3 million incidents of crime occur in America's schools each year, it is clear that this problem continues to plague many schools, threatening students' safety and undermining the learning environment. OJJDP is considering continuing this partnership with the Department of Education by issuing a competitive solicitation for a cooperative agreement with a private nonprofit organization to provide training and technical assistance to communities and school districts across the country. It is expected that these activities would be closely coordinated with the ongoing review of literature, research, and evaluation of school-based demonstration efforts being undertaken by the Hamilton Fish National Institute on School and Community Violence with OJJDP FY 1998 funding support.

Disproportionate Minority Confinement

OJJDP is interested in exploring additional work in the area of disproportionate minority confinement in secure detention or correctional facilities, adult jails and lockups, and other secure institutional facilities. The proposed work would include a variety of activities, including—but not limited to—demonstration programs, national education efforts, and local program evaluations.

Disproportionate minority representation in secure juvenile facilities and other institutions is a major problem facing the juvenile justice system. While minorities represent 32 percent of the juvenile population ages 12 to 17, they represent 68 percent of the confined juvenile population.

OJJDP has previously funded programs designed to assist and enable States to identify strategies to address the overrepresentation of minority juveniles, including an evaluation of a county juvenile court's efforts to reduce minority overrepresentation. Similar efforts, particularly those that offer conceptual, indepth, capacity-building approaches, would help to ensure that minority juvenile offenders receive

appropriate treatment at all stages of the juvenile justice system process. OJJDP would seek public/private partnerships and would coordinate any new program efforts with the current training/technical assistance provider, Cygnus Corporation (see the program descriptor for the Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement).

Arts Programs in Juvenile Detention Centers

OJJDP is considering providing support for mentoring and skill development for youth in juvenile detention centers through the establishment of artist-in-residence programs. This initiative would increase awareness of opportunities to establish visual, performing, media, and literacy artist-in-residence programs in juvenile detention centers.

OJJDP would encourage the development of these programs by convening interested arts organizations and juvenile justice agencies for the purpose of providing training in program development and exposure to ''best practices'' among existing programs.

OJJDP is also interested in the development and dissemination of technical assistance materials to support the establishment of artist-in-residence programs in juvenile detention facilities.

If OJJDP funds this initiative, it would explore the possibility of partnerships with other Federal agencies and would issue a competitive solicitation in FY 1998.

''Circles of Care''—A Program To Develop Strategies To Serve Native American Youth With Mental Health and Substance Abuse Needs

The Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration (SAMHSA) is developing a Guidance for Federal Applicants that will result in the funding of a 3-year program to 6–8 sites to plan and develop systems of care for Native American youth who are seriously emotionally disturbed and/or substance abusers. The grantees will engage in a structured process to plan, develop, and test a system of care that achieves the outcomes developed by American Indian, Alaskan Native, or urban nonprofit organizations serving populations of American Indian or Alaskan Native youth.

OJJDP is considering providing resources, including grant funds and technical assistance, where appropriate, to assure that American Indian/Alaskan Native youth who are in the juvenile justice system and who are seriously emotionally disturbed or substance abusers are planned for and made part of the service system. OJJDP would transfer funds to CMHS/SAMHSA to assist with the development and implementation of this program.

Juvenile Defender Training, Technical Assistance, and Resource Center

In FY 1993, OJJDP competitively funded the American Bar Association (ABA) to determine the status of juvenile defense services in the United States, develop a report, and provide training and technical assistance. The ABA—along with its partners, the Youth Law Center of San Francisco, California, and the Juvenile Law Center of Philadelphia, Pennsylvania—conducted an extensive survey of public defender offices, court-appointed systems, law school clinics, and the literature. These data were then analyzed and a report, entitled *A Call for Justice,* was developed and published in December 1995.

The ABA has also developed and delivered specialized training to juvenile defenders in several jurisdictions, such as the State of Maryland, the State of Tennessee, Baltimore County, Maryland, and several other States and localities, to assist in increasing the capacity of juvenile defenders to provide more effective defense services. In October 1997, the ABA and its partners organized and implemented the first Juvenile Defender Summit at Northwestern University in Chicago, Illinois. The Summit brought together public defenders, court-appointed lawyers, law school clinic directors, juvenile offender services representatives, and others for a 2½-day meeting to examine the issues related to juvenile defense services and recommend strategies for improving these services.

This work has served as a backdrop for an ABA recommendation to develop a more permanent structure to support training and technical assistance and to serve as a clearinghouse and resource center for juvenile defenders in this country. Recognizing that a lack of training, technical assistance, and resources for juvenile defenders weakens the juvenile justice system and results in a lack of due process for juvenile offenders, OJJDP is considering providing seed money in FY 1998 to fund the initial planning and implementation of a Juvenile Defender Center. In addition, OJJDP would, either directly or through a competitively selected grantee, seek partners in the public and private sector to help fund and sustain this effort. The Center would be designed to provide both general and specialized training and technical assistance to juvenile defenders in the United States. The design would also incorporate a resource center for purposes such as serving as a repository for the most recent litigation on key issues, a brief bank, and information on expert witnesses. OJJDP anticipates that, if funded, this program would be a 5-year effort.

Gender-Specific Programming for Female Juvenile Offenders

In 1996, one in four juvenile arrests was of a female, and increases in arrests between 1992 and 1996 were greater for juvenile females than juvenile males in most offense categories. Yet programs to address the unique needs of female delinquents have been and remain inadequate in many jurisdictions. The risk factors that females face are not identical with those facing males. Major risk factors for girls include abuse and exploitation, substance abuse, teen pregnancy and parenting, low or damaged self-esteem, and truancy or dropping out of school. Communities and their juvenile justice systems need to develop programs designed to help female offenders overcome these risk factors.

OJJDP is considering funding programming in the area of gender-specific services for female offenders to continue supporting efforts modeled on the OJJDP-funded program in Cook County, Illinois, and gender-specific components of the SafeFutures program sites.

Cook County, for example, used an FY 1995 competitive grant to build a network of support for juvenile female offenders in Cook County. The County's work in this area involved developing a gender-specific needs and strengths assessment instrument and a risk assessment instrument for juvenile female offenders, providing training in implementing gender-appropriate programming, and designing a pilot program that includes a community-based continuum of care with a unique case management system.

OJJDP is considering supporting programs designed to build infrastructure for programming for female juvenile offenders and to move from development of basic tools through the provision of training and technical assistance to the support of a program demonstration including a focus on teen pregnancy issues. If funded, an evaluation of this demonstration program would also be undertaken

through a competitive process in FY 1998.

Evaluation Capacity Building

The question of ''what works'' pervades discussions of juvenile justice. To find answers, program administrators and agency personnel need to conduct rigorous evaluations of programs of interest. OJJDP has determined that a strong, cooperative arrangement between OJJDP and State agencies responsible for juvenile justice and delinquency prevention programming can most effectively provide answers to this question. To that end, OJJDP is considering initiating a grant program to build the capacity of State Formula Grants program agencies to conduct rigorous evaluations of juvenile justice programs and projects funded in their States with JJDP Act funds. OJJDP would then take the lead in disseminating evaluation results and information to the field.

The intent of these awards would be to build capacity for developing and sustaining such evaluations and to supplement State funding to support the evaluation of programs and projects. OJJDP would award funds to qualifying States that agreed to enhance their existing evaluation capacity and that were able to demonstrate an evaluation program that effectively combines State Formula Grants program funds and OJJDP discretionary funds and that would produce solid evaluation results over a 2-year period.

Field-Initiated Research

OJJDP's efforts to address the problems of juvenile offending are enriched most through the thoughtful and dedicated efforts of researchers in the field. Through the work of agencies, individuals, and organizations, OJJDP has benefited from innovative thinking and new directions. To encourage such innovative research in juvenile offending and juvenile justice, OJJDP is considering offering grants in FY 1998 for research initiated by researchers in the field. Through this series of grants, OJJDP would expect to learn new alternatives and options for various problems facing the juvenile justice system.

OJJDP is particularly interested in research that addresses: (1) The mental health needs of youth in custody, (2) the mental health needs of youth at-risk for entering the juvenile justice system, (3) the development of risk and needs assessments for use in the juvenile justice system, (4) the reduction of substance abuse by juveniles, and (5) the circumstances and needs of youth on probation.

Field-Initiated Evaluation

OJJDP's evaluation efforts have traditionally focused on the evaluation of OJJDP-funded programs. However, to expand the base of knowledge of effective programs, OJJDP is considering funding evaluations of programs, including those not funded by OJJDP. With scarce dollars going generally for program delivery and administration, knowledge of what works best, and for whom, generally rests on anecdotal evidence. Rigorous scientific evaluations can provide more information about specific programs and alternatives that hold promise.

OJJDP is particularly interested in evaluations that examine (1) Child Advocacy Centers, (2) youth recreation programs, and (3) gender-specific programming.

Analysis of Juvenile Justice Data

Funding for this new program is being considered as a means of providing for the analysis and interpretation of diverse sources of data and information on juvenile offending and the juvenile justice system, beyond that currently funded for the analysis of OJJDP data sets. This project would provide a source for identifying and reporting important information from nontraditional sources. The project would develop OJJDP's capacity to use and analyze data collections covering such related areas as health, education, and employment. It would provide a means for routinely publishing specialized reports that assimilate such data sources. It would also support the management and direction of OJJDP efforts through the contribution of analyses directed towards the Office's priorities and initiatives.

Evaluation of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

In FY 1998, OJJDP is considering beginning a multiyear, multisite evaluation of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The evaluation would first look at the lessons learned from the Comprehensive Strategy training and technical assistance process that was provided in three pilot communities: Fort Myers and Jacksonville, Florida, and San Diego, California. The evaluation would then look at the effect of the 2-year training and technical assistance process that is currently being provided in 5 States and 26 local jurisdictions and is about to commence in up to two additional States. The training and technical assistance process is designed to transfer the knowledge, skills, tools, and practices necessary to develop a comprehensive strategic plan in each community. The evaluation would document the effectiveness of the training and technical assistance process in a sample of communities. The evaluation would also look at the crime and delinquency outcomes and the level of services being provided in each of the jurisdictions that have successfully completed the training and technical assistance process and are implementing their comprehensive strategic plan. In the first year, the evaluation would also document baseline data in the States and local communities.

Blueprints for Violence Prevention: Training and Technical Assistance

In a 1994 survey, more than half of the respondents identified crime and violence as the most important problem facing this country, and violence was unanimously identified as the ''biggest problem'' facing the Nation's public schools. Many communities are ready to take meaningful action to combat these problems, but are struggling in determining both ''what works'' and how to implement those effective strategies and programs. As a result, many jurisdictions are moving forward with insufficient knowledge on how to be successful in both of these areas of focus.

To address this issue, OJJDP proposes to award a cooperative agreement to the Center for the Study and Prevention of Violence (CSPV) at the University of Colorado. CSPV has completed a study, begun in 1996, of 10 violence prevention programs that met a rigorous scientific standard of program effectiveness and replicability—programs that could be documented in ''blueprints'' that could be utilized for further replication. Under this grant, CSPV would provide technical assistance to community organizations and program providers to ensure quality implementation of Blueprint model programs that have been demonstrated to be effective in reducing adolescent violence, crime, and substance abuse.

The specific goal of this project will be to assist in the replication of these blueprint programs by: (1) Determining the feasibility of program development for each community or agency request for technical assistance in terms of a needs assessment and the capacity for the community/agency to implement the program with integrity and (2) providing training and technical assistance to communities/agencies that are ready to begin the implementation process. CSPV would both monitor and

assist the program during its first year of operation.

This project would be implemented by the Center for the Study and Prevention of Violence because of its unique status as the developer of the Blueprints for Violence Prevention project and previous research in this specific area. No additional applications would be solicited in FY 1998.

Teambuilding Project for Courts

OJJDP, in conjunction with the State Justice Institute (SJI), is interested in supporting projects to: (1) Explore emerging issues that will affect juvenile courts as they enter the 21st century, and (2) develop and test innovative approaches for managing juvenile courts, securing resources required to fully meet the responsibilities of the judicial branch, and institutionalizing long-range planning processes across the multiple disciplines in the juvenile justice system. This joint effort would test innovative programs and procedures for providing clear and open communications between the judiciary, other branches of government, and juvenile justice practitioners.

The primary goal would be to develop and implement a teambuilding project designed to facilitate better coordination and information sharing and foster innovative, efficient solutions to problems facing juvenile courts. Activities may include: (1) Preparing and presenting educational programs to foster development of effective multidisciplinary teams; (2) delivering onsite technical assistance to develop a team or enhance an existing partnership; (3) providing information on teambuilding through a national resource center; and (4) preparing manuals, guides, and other written and visual products to assist in the development and operation of effective teams.

Competitive grants would be awarded to support demonstration projects. Funds would be transferred to SJI to administer the program through a cooperative agreement.

Child Abuse and Neglect and Dependency Courts

Safe Kids/Safe Streets: Community Approaches To Reducing Abuse and Neglect and Preventing Delinquency

Reports of child victimization, abuse, and neglect in the United States continue to be alarming. For example, in 1996 alone, an estimated 3.1 million children were reported to public welfare agencies for abuse or neglect. Nearly 1 million of those children were substantiated as victims. Usually, abuse is inflicted by someone the child knows, frequently a family member.

Numerous studies cite the connection between abuse or neglect of a child and later development of violent and delinquent behavior. Acknowledging this correlation and the need to both improve system response and foster strong, nurturing families, several offices and bureaus of the Office of Justice Programs joined in FY 1996 to develop a coordinated program response. The resulting initiative, a 5½ year demonstration program designed to foster coordinated community responses to child abuse and neglect, was titled Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency. (An accompanying evaluation program, Evaluation of the Safe Kids/Safe Streets Program, was also developed.)

The purpose of the Safe Kids/Safe Streets program is to break the cycle of early childhood victimization and later juvenile or adult criminality and to reduce child and adolescent abuse and neglect and resulting child fatalities. It strives to do this by providing fiscal and technical support for efforts to restructure and strengthen State and local criminal and juvenile justice systems to be more comprehensive and proactive in helping children and adolescents and their families. The program also has as a goal to implement or strengthen coordinated management of abuse and neglect cases by improving the policy and practice of the criminal and juvenile justice systems and the child welfare, family services, and related systems. These goals require communities to develop, implement, and/or expand cross-agency strategies.

OJJDP, the administering agency for the Safe Kids/Safe Streets program, awarded competitive cooperative agreements in FY 1997 to five demonstration sites and to a national evaluator. Funds are provided by OJJDP, the Office of Victims of Crime (OVC) and the Violence Against Women Grants Office (VAWGO). Recipients of the awards are the National Children's Advocacy Center, Huntsville, Alabama; the Sault Ste. Marie Tribe of Chippewa Indians in Sault Ste. Marie, Michigan; Heart of America United Way of Kansas City, Missouri; Toledo Hospital Children's Medical Center in Toledo, Ohio; and the Community Network for Children, Youth and Family Services of Chittenden County, Vermont. The national evaluator is Westat, Inc., of Rockville, Maryland.

Four of the five funded demonstration sites are in the process of developing implementation plans. The fifth is in the initial stages of implementing its plans to improve the coordination of prevention, intervention, and treatment services and to improve cross-agency coordination. The national evaluator has begun the process of assessing site needs and developing measurement variables. Each award has been made under a 5½ year project period.

In FY 1998, Safe Kids/Safe Streets grantees will continue to implement their plans. Continuation awards will be made to each of the current demonstration sites. No additional applications will be solicited in FY 1998.

National Evaluation of the Safe Kids/Safe Streets Program

To evaluate the Safe Kids/Safe Streets grant program, OJJDP competitively awarded a grant to Westat, Inc. in FY 1997. The purpose of the evaluation is to document and explicate the process of community mobilization, planning, and collaboration that has taken place before and during the Safe Kids/Safe Streets awards; to inform program staff of performance levels on an ongoing basis; and to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets program. The initial 18-month grant will begin a process evaluation and determine the feasibility of an impact evaluation. If it is determined that an impact evaluation is feasible, additional funds may be awarded to implement such an evaluation in FY 1998.

The goals for Phase I of the Evaluation of the Safe Kids/Safe Streets program are: (1) To understand the process of implementation of the Safe Kids/Safe Streets program in order to strengthen and refine the program for future replication; (2) to identify factors that contribute to or impede the successful implementation of the program; (3) to help develop or improve the capability and utility of local data systems that track at-risk youth, including victims of child neglect or abuse; (4) to build an understanding of the general effectiveness of the Safe Kids/Safe Streets program approach and its program components; and (5) to help develop the capacity of Safe Kids/Safe Streets sites to evaluate what works in their communities.

The objectives of this initial phase of the evaluation are: (1) To develop a detailed design, including data collection instruments, for a process evaluation of the Safe Kids/Safe Streets program for implementation in collaboration with all sites; (2) to develop templates for capturing the data necessary for the national process evaluation and to make those templates

available for implementation at the sites; and (3) to provide evaluation training and technical assistance for, and to collaborate with, grantees at each of the sites in implementing a process evaluation of the development and implementation of each Safe Kids/Safe Streets program site.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 1998.

Secondary Analysis of Childhood Victimization

In FY 1997, OJJDP awarded a two-year grant to the University at Albany, State University of New York, to support secondary analysis of data that were collected on 1,200 individuals as part of a National Institute of Justice research project that began in 1986. The data set includes extensive information on psychiatric, cognitive, intellectual, social, and behavioral functioning. It also contains information on documented and self-reported criminal and runaway behavior in a large sample of unsubstantiated cases of early childhood physical and sexual abuse and neglect and matched controls. The data base includes information from archival juvenile court and probation department records and law enforcement records and interview information on a range of topics, including psychiatric assessment, intelligence, and reading ability.

The initial set of secondary analyses, during the first year of the OJJDP award, focused on childhood victimization as a precursor to running away and subsequent delinquency. Initial research questions focused on whether running away puts a child at increased risk for becoming a violent offender and repeat violent offender as a juvenile and whether abused and neglected children who run away are at greater risk than children who have not been abused.

In FY 1998, the research will look at several other outcomes such as out-of-home placements and drug use by children who run away. Gender differences will also be explored. This research will also explore the differential impact of childhood victimization by race/ethnicity.

This project is being conducted by Cathy Spatz Widom, principal researcher, under a grant to the University at Albany, State University of New York. No additional applications will be solicited in FY 1998.

Evaluation of Nurse Home Visitation in Weed and Seed Sites

OJJDP will administer the evaluation program of Nurse Home Visitation programs in six Weed and Seed sites across the Nation with FY 1997 funds transferred to OJJDP from the U.S. Department of Health and Human Services. Six Weed and Seed sites, one of which is a SafeFutures site, are providing nurse home visitation services. These sites have been designated for evaluation in order to determine the impact of the specific program model of nurse home visitation implemented within normal operating environments in communities. Nurse home visitation has been found to be effective in reducing welfare dependency, increasing employment, decreasing or delaying repeat childbearing, reducing the incidence of child maltreatment, and reducing crime and delinquency within the context of randomized clinical trials.

OJJDP is considering supplementing this evaluation in FY 1998 to enhance data collection and analysis.

The project would be implemented by the University of Colorado Prevention Research Center. No additional applications would be solicited in FY 1998.

Dated: January 30, 1998.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–2729 Filed 2–5–98; 8:45 am]

BILLING CODE 4410–18–P

Friday
February 6, 1998

Part IV

Securities and Exchange Commission

17 CFR Parts 228, et al.
Plain English Disclosure; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239 and 274

[Release Nos. 33–7497; 34–39593; IC–23011; International Series No. 1113; File No. S7–3–97]

RIN 3235–AG88

Plain English Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are adopting the plain English rule with some changes based on the comments we received and the lessons we learned from the plain English pilot participants. The rule requires issuers to write the cover page, summary, and risk factors section of prospectuses in plain English. We are changing the existing requirements for these sections to the extent they conflict with the plain English rule. We are also giving issuers more specific guidance on how to make the entire prospectus clear, concise, and understandable. We believe that using plain English in prospectuses will lead to a better informed securities market—a market in which investors can more easily understand the disclosure required by the federal securities laws.

DATES: *Effective Date.* October 1, 1998.

Compliance Date. October 1, 1998. When we act on the amendments to the mutual fund disclosure requirements that we proposed in February 1997, we may change the date by which mutual funds must comply with these amendments.

FOR FURTHER INFORMATION CONTACT: Ann D. Wallace or Carolyn A. Miller at (202) 942–2980 or David Maltz at (202) 942–1921 in the Division of Corporation Finance. If your questions involve mutual funds, call Kathleen K. Clarke at (202) 942–0724 or Markian Melnyk at (202) 942–0592 in the Division of Investment Management. Direct your questions on the staff's plain English handbook to Nancy M. Smith at (202) 942–7040.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 421,[1] 461[2] and 481[3] of Regulation C[4] and Items 101,[5] 501,[6] 502,[7] 503,[8] and 508[9] of Regulations S–K[10] and S–B.[11] We are also adopting minor amendments to Forms S–2,[12] S–3,[13] S–4,[14] S–20,[15] F–2,[16] F–3,[17] F–4,[18] and N–2.[19]

Our Office of Investor Education and Assistance will issue, within the next six weeks, a final version of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents.* The handbook will give techniques and tips on how to create plain English disclosure documents. We suggest you order a hard copy by calling 800–SEC–0330. Some of the handbook's graphic elements will not be available on the web version. A draft version is available now on our Internet site (http://www.sec.gov).

Table of Contents

I. Executive Summary

Full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. If a prospectus fails to communicate information clearly, investors do not receive that basic protection. Yet, prospectuses today often use complex, legalistic language that is foreign to all but financial or legal experts. The proliferation of complex transactions and securities magnifies this problem. A major challenge facing the securities industry and its regulators is assuring that financial and business information reaches investors in a form they can read and understand.

In response to this challenge, we undertake today a sweeping revision of how issuers must disclose information to investors. This new package of rules will change the face of every prospectus used in registered public offerings of securities.[20] Prospectuses will be simpler, clearer, more useful, and we hope, more widely read.

First, the new rules require issuers to write and design the cover page, summary, and risk factors section of their prospectuses in plain English. Specifically, in these sections, issuers will have to use: short sentences; definite, concrete, everyday language; active voice; tabular presentation of complex information; no legal or business jargon; and no multiple negatives. Issuers will also have to design these sections to make them inviting to the reader. In response to comments, the new rules will not require issuers to limit the length of the summary, limit the number of risk factors, or prioritize risk factors.

Second, we are giving guidance to issuers on how to comply with the current rule that requires the entire prospectus to be clear, concise, and understandable. Our goal is to purge the entire document of legalese and repetition that blur important information investors need to know.

Also, our Office of Investor Education and Assistance is finalizing a handbook with practical tips on how to prepare plain English documents. This handbook explains how to apply plain English principles to disclosure documents.

To ensure a smooth transition, the plain English rule and the other changes adopted today will apply beginning October 1, 1998. We encourage all

[1] 17 C.F.R. 230.421.
[2] 17 C.F.R. 230.461.
[3] 17 C.F.R. 230.481.
[4] 17 C.F.R. 230.400 *et seq.*
[5] 17 C.F.R. 229.101.
[6] 17 C.F.R. 229.501.
[7] 17 C.F.R. 229.502.
[8] 17 CFR 229.503.
[9] 17 CFR 229.508.
[10] 17 CFR 229.10 *et seq.*
[11] 17 CFR 228.10 *et seq.*
[12] 17 CFR 239.12.
[13] 17 CFR 239.13.
[14] 17 CFR 239.25.
[15] 17 CFR 239.20.
[16] 17 CFR 239.32.
[17] 17 CFR 239.33.
[18] 17 CFR 239.34.
[19] 17 CFR 239.14.
[20] We proposed this package of rules in January 1997. See Release No. 33–7380 (January 14, 1997), 62 FR 3512 (January 21, 1997).

participants in securities offerings to start following these plain English principles now when writing their prospectuses. Our staff will continue its efforts to assist companies in drafting prospectuses in plain English.

II. Lessons From the Plain English Pilot Program

To test plain English in disclosure documents, the Division of Corporation Finance started a pilot program in 1996 for public companies willing to file plain English documents under either the Securities Act of 1933[21] or the Securities Exchange Act of 1934.[22] More than 75 companies have volunteered to participate in the pilot program. Many participants have prepared disclosure documents that will not be subject to the plain English rule, including proxy statements, footnotes to financial statements,[23] and management's discussion and analysis of financial condition and results of operations.[24]

We have included in Appendix B a list of pilot participants that filed plain English documents. These pilot participants produced examples of disclosure that is clear, well-written, and designed to increase investors' understanding.

Our experience with the pilot participants affirms our belief that preparing documents in plain English increases investors' understanding and helps them make informed investment decisions. The package of rules we are adopting, as well as the handbook, will enable issuers to improve dramatically the clarity of their disclosure documents.

III. Rules on How To Prepare Prospectuses

A. Plain English Rule—Rule 421(d)

Rule 421(d), the plain English rule, requires you to prepare the front portion of the prospectus in plain English. You must use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors section. Also, when drafting the language in these front parts of the prospectus, you must comply substantially with six basic principles:

- Short sentences;
- Definite, concrete, everyday language;
- Active voice;
- Tabular presentation or bullet lists for complex material, whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

A number of comment letters noted that our rule dictates how to write the front of the prospectus. They are correct. We have seen marked improvement in the clarity of disclosure when pilot participants have used these widely recognized, basic principles of clear writing. We believe the benefits to investors support mandating the use of these writing principles for the front of the prospectus.

In addition, you must design the cover page, summary, and risk factors section to make them easy to read. You must format the text and design the document to highlight important information for investors. The rule permits you to use pictures, charts, graphics, and other design features to make the prospectus easier to understand.

B. Clear, Concise, and Understandable Prospectuses—Rule 421(b)

Rule 421(b) currently requires that the entire prospectus be clear, concise, and understandable. This requirement is in addition to the plain English rule we are adopting, which applies only to the front of the prospectus.

We are adopting, as proposed, amendments to Rule 421(b). These amendments provide guidance on how to prepare a prospectus that is clear, concise, and understandable. The amendments set out four general writing techniques that you must follow and list four conventions to avoid when drafting the prospectus. As several comment letters noted, these amendments codify our earlier interpretive advice.[25]

Amended Rule 421(b) requires you to use the following techniques when writing the entire prospectus:

- Present information in clear, concise sections, paragraphs, and sentences. Whenever possible, use short explanatory sentences and bullet lists;
- Use descriptive headings and subheadings;
- Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and
- Avoid legal and highly technical business terminology.

The new note to Rule 421(b) provides guidance on how to comply with the rule's general requirements. The note lists the following drafting conventions to avoid because they make your document harder to read:

- Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;
- Vague boilerplate explanations that are readily subject to differing interpretations;
- Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- Repetitive disclosure that increases the size of the document, but does not enhance the quality of the information.

C. Comments on Proposed Amendments to Rule 421(b) and Rule 421(d)

Several comment letters stated that we should permit public companies to use legal and technical business terminology. The letters noted, for example, that high technology companies must use technical terms to distinguish their products or services from others in the industry. We recognize that certain business terms may be necessary to describe your operations properly. But, you should avoid using excessive technical jargon that only your competitors or an industry specialist can understand.

You should write the disclosure in your prospectus for investors. When you use many highly technical terms, the investor must learn your dictionary of terms to understand your disclosure. If technical terms are unavoidable, you should make every effort to explain their meaning the first time you use them.

Several comment letters noted that some investors, particularly institutional investors, want to read the specific terms of contracts or the securities offered. For example, an investor may want to read the specific language of a loan agreement's financial covenants or an indenture's default provisions.

Our current rule permits you to summarize an exhibit's key provisions in your prospectus.[26] Moreover, we require you to file material contracts and any instruments that define the rights of security holders. We believe this approach generally serves the needs of all investors in the market. If you cannot adequately summarize the language from an exhibit in the prospectus, then you should include that language. However, you must

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[21] 15 U.S.C. 77a *et seq.*

[22] 15 U.S.C. 78a *et seq.*

[23] See the Forms 10–Q of Pfizer, Inc. (File No. 1–3619) for fiscal 1997.

[24] See the 1996 Form 10–K filed by Baltimore Gas and Electric Company (File No. 1–1910) and the Boddie-Noell Properties, Inc. registration statement filed December 2, 1997 (File No. 333–39803).

[25] See Securities Act Release No. 6900 (June 17, 1991).

[26] Rule 421(c), 17 CFR 230.421(c).

present it clearly and explain what it means to investors.

IV. Revisions to Regulations S–K and S–B

We are adopting these revisions largely as we proposed them. However, based on the comment letters and our belief that communicating clearly should be the focus of disclosure to investors, we are not adopting any requirements that would require you to:

- Limit the length of the summary;
- Limit the number of risk factors; or
- Prioritize risk factors.

A. Item 501—Forepart of Registration Statement and Outside Front Cover Page of Prospectus[27]

As proposed, we are eliminating the formal design requirements for the prospectus cover page. We are, however, requiring you to limit the front cover of the prospectus to one page. We believe these revisions will allow you to design and write a cover page that will focus investors on key information about the offering and encourage them to read the important information in the prospectus. Also, we intend for these amendments to give you the flexibility you need to design a cover page tailored to your company and the offering.

Under the revised disclosure item, you are free to use pictures, graphs, charts, and other designs that accurately depict your company, business products, and financial condition. The staff will object to design features and font types that make the disclosure hard to read or understand.

We are amending the formalized requirements on how you present the mandatory legends on the cover page. We are not placing any restrictions on how you present these legends, except:

- You must make the legends prominent; and
- You must make the print type easy to read.

Using all capitalized letters for the legends does not give them proper prominence. Rather, it makes them hard to read. A well-designed cover page that does not crowd the legends with other text can give them the prominence they need.

We have amended Item 501 to give you two plain English examples of the legend that states the Commission has not approved the offering.[28] The item also gives you a plain English example of the legend that states the prospectus is not yet complete, commonly called the ''red herring'' legend.

We are revising the requirements on information that you must always include on the prospectus cover page. Our goal is to have the cover page focus on key information about the offering. You should avoid moving information to the cover page unnecessarily.

We had proposed to eliminate the requirement that the cover page include a cross-reference to the risk factors section in the prospectus. In response to comment letters emphasizing the importance of this information, we are keeping this requirement. The cover page must reference the risk factors section and state the page number on which the risk factors begin.

The following table shows the current requirements for the prospectus cover page and the changes we are adopting.

REGULATION S–K—ITEM 501

Current	Final
• Cover page of registration statement	• Same.
• Company name	• Same.
• Title, amount, and description of securities offered	• Same.
• Selling security holders offering	• Same.
• Cross-reference to risk factors	• Same, except cross-reference must include page number. No print type specified.
• Formatted distribution table showing price, underwriting commission, and proceeds of offering.	• Delete distribution table. Use bullet list or other design that highlights the information.
• Show bona fide estimate of range of maximum offering price and number of securities.	• Same.
• If price not set, show how price will be determined	• Same.
• Formatted best efforts disclosure and distribution table	• Delete distribution table. Use bullet list or other design that highlights the information.
• Commission legend	• Retain in plain English. Include reference to state securities commissions. No print type specified.
• State-required legends	• Same.
• Underwriters' over-allotment option, expenses of offering, commissions paid by others, and other non-cash consideration and finders' fees.	• Identify existence of the option and the number of shares. Move all other information to the plan of distribution section.
• No requirement to identify market for securities, trading symbol, underwriters, or type of underwriting arrangements.	• Identify market for securities, trading symbol, underwriters, and type of underwriting arrangements.
• Date of prospectus	• Same.
• Prospectus ''Subject to Completion'' legend	• Retain in plain English.
• No page limit	• Must limit cover to one page.

[27] Item 501 of Regulation S–K, 17 CFR 229.501, and Item 501 of Regulation S–B, 17 CFR 228.501.

[28] The North American Securities Administrators Association, Inc.'s Disclosure Reform Task Force recommended that the suggested legend include a reference to the state securities commissions. We have changed the legend to reflect this suggestion.

In our proposing release, we asked whether we should require specific information on the prospectus cover page for certain types of offerings, such as mergers, exchange offers, or limited partnership offerings. Several comment letters suggested that the plain English rule and the revised disclosure requirements should replace our earlier interpretive advice on cover page disclosure for limited partnership offerings.[29]

We believe that the plain English rule and the revised disclosure requirements are consistent with our earlier advice on limited partnership offering prospectuses and similar offerings, with one significant exception. Under our advice, the cover page must list the offering's key risks, resulting in repetitious disclosure of those risks. However, we believe the unique nature of these offerings and the risks they present to investors warrant requiring the issuer to highlight these risks on the cover page. Of course, the cover page, summary, and risk factors section must otherwise comply with the plain English rule and the revised disclosure requirements we are adopting.

We are not adopting special requirements for any other type of offering. We have had a number of merger prospectuses in the pilot program that provide excellent guidance on how to apply plain English to these offerings.

B. Item 502—Inside Front and Outside Back Cover Pages of Prospectus [30]

We are amending the requirements for the inside front cover page and outside back cover page of the prospectus to limit significantly the information you are required to include on these pages. We believe this will give you further freedom to arrange the information in the prospectus from investors' viewpoints. The table at the end of this section shows the current requirements for these pages and the changes we are adopting.[31]

Although we prefer that the required table of contents immediately follow the cover page, we believe you should continue to have the flexibility to include it on either the inside front or outside back cover page of the prospectus. However, if you deliver a prospectus to investors electronically, you must include the table of contents immediately after the cover page. This placement will benefit investors because they will not have to scroll to the end of the prospectus to see how it is organized.

Although some comment letters recommended that we eliminate the requirement to disclose the dealer's prospectus delivery obligations, we have decided to retain this disclosure on the outside back cover page. We believe this disclosure is helpful to dealers in meeting their legal obligation to deliver the prospectus.

REGULATION S–K—ITEM 502

Current	Final
• Availability of Exchange Act reports generally	• Move to description of business section or, for short-form registration statements, to the incorporation by reference disclosure.
• Identify market for securities	• Move to cover page.
• Availability of annual reports to shareholders with financial statements for foreign issuers and others not subject to proxy rules.	• Move to description of business section.
• Availability of Exchange Act reports incorporated by reference in short-form registration statements.	• Move to incorporation by reference disclosure.
• Stabilization legend	• Move to plan of distribution section.
• Passive market making activities legend	• Delete. Disclosure retained in plan of distribution section.
• Dealer prospectus delivery	• Retain on outside back cover page.
• Enforceability of civil liability provisions of federal securities laws against foreign persons.	• Move to description of business section.
• Table of contents	• Same. If prospectus delivered electronically, must immediately follow cover page.

C. Item 503—Summary Information, Risk Factors, and Ratio of Earnings to Fixed Charges [32]

1. Summary Information

If you include a summary, it must be brief and in plain English. Further, if you include a summary description of the company's business operations or financial condition, you must write this information in plain English even if you do not caption it a ''summary.''

Although we have not limited the length of the summary, we believe this section should highlight the most important features of the offering. For example, the summary should not include a lengthy description of the company's business and business strategy. This detailed information is better suited to the disclosure in the body of the prospectus.

Several comment letters suggested that we require a summary section. We decided against this because a summary may not be helpful in all prospectuses. For example, you may not need to summarize the prospectus in a short-form registration statement.

Several comment letters suggested that we specify the information that must be in a summary. Because we believe you need flexibility to write a summary that is appropriate to your offering, we are not adopting specific disclosure items for the summary. However, because the financial statements are an important part of the disclosures made by public companies, we believe you should continue to highlight financial information in the summary. You should present this financial information in a manner that allows investors to understand it easily.

2. Risk Factors

If you include a risk factors section in your prospectus, you must write the risk factors in plain English and avoid ''boilerplate'' risk factors. We believe a discussion of risk in purely generic terms does not tell investors how the risk may affect their investment in a specific company. You should place any risk factor in context so investors can understand the specific risk as it applies to your company and its operations.

[29] See Securities Act Release No. 6900 for our interpretive advice on limited partnership offerings.

[30] Item 502 of Regulation S–K, 17 CFR 229.502, and Item 502 of Regulation S–B, 17 CFR 228.502.

[31] We are also amending Forms S–2, S–3, S–4, F–2, F–3, and F–4. Along with the list of reports incorporated by reference, you will include information on (1) how investors may obtain a copy of these reports, and (2) how they may obtain copies of the other reports you file with the SEC.

[32] Item 503 of Regulation S–K, 17 CFR 229.503, and Item 503 of Regulation S–B, 17 CFR 228.503.

3. Ratio of Earnings to Fixed Charges

When you offer debt or preferred equity, you must disclose a ratio of earnings to fixed charges. Where you include a prospectus summary, amended Item 503 requires you to show the ratio of earnings to fixed charges as part of the summarized financial data.

V. Plain English for Investment Companies

The plain English rule applies to prospectuses of investment companies and will complement our disclosure initiatives for these companies.[33] Also, the amendments we are adopting to Rule 481 require these companies to write and design the front parts of their prospectuses in plain English.

As part of our commitment to improve mutual fund disclosure, in February 1997, we proposed significant changes to the disclosure requirements for mutual fund prospectuses and new summary disclosure documents called ''profiles.'' [34] These proposals would require a standardized risk/return summary in mutual fund prospectuses and profiles. The risk/return summary would include a concise narrative discussion of fund risks and a bar chart showing a fund's annual returns for the past ten years. We expect to consider these and other changes to mutual fund prospectuses shortly. The plain English rule will apply to the cover page and the risk/return summary in prospectuses and the new fund profiles.[35]

Investment companies must comply with the plain English rule and the revised disclosure requirements for new registration statements filed on or after October 1, 1998. When we act on the changes to the mutual fund disclosure requirements, we may change the compliance date for mutual funds so they may comply with these new requirements with one filing.[36]

VI. Phase-In of the Plain English Rule and Other Requirements for Issuers Other Than Investment Companies

To ease the transition to plain English and to avoid delaying your access to the capital markets, we will phase in the plain English rule and the other changes as follows:

- If you first file a registration statement on or after October 1, 1998, you must comply with the new requirements.[37] If you file a registration statement before October 1, 1998, but it is not yet effective on that date, you do not have to amend it to comply with the new requirements before it is effective.
- On or after October 1, 1998, any supplement you file to a prospectus in an effective registration statement that relies on Rule 415(a)(1)(x) must comply with the new requirements.
- If you file a post-effective amendment on or after October 1, 1998, either to include the company's latest audited financial statements in the registration statement or to update the prospectus under Section 10(a)(3),[38] you must comply with the new requirements.

If you elect to comply immediately with any of the plain English requirements, we believe you should comply with all of them to make the document more readable. For example, you should not have a plain English cover page and a legalistic summary or risk factors section.

During the phase-in period, we will hold workshops to help issuers, underwriters, and their counsel comply with the plain English rule. Until October 1, 1998, the staff will continue the plain English pilot program, but because of limited resources and because we expect high demand by issuers to participate in the pilot, the staff will no longer offer expedited review. We encourage issuers to participate in the pilot program with both Securities Act and Exchange Act documents.

VII. Comments on the Plain English Proposals

We received 45 comment letters on the plain English proposals.[39] Generally, the comment letters favored requiring plain English for the front of prospectuses—the cover page, summary, and risk factors section. The American Society of Corporate Secretaries and the American Corporate Counsel Association, as well as several public companies, supported the plain English requirements. They believe that requiring plain English will focus all parties involved in the offering process—issuers, underwriters, trustees, and counsel—on clear and readable disclosure. Investor groups, such as the American Association of Retired Persons and the Consumer Federation of America, supported adopting the plain English rule to ensure that investors receive clear information.

Other comment letters raised the following general concerns about the plain English rule:

- Will the plain English rule increase a registrant's liability?
- How will the staff review and comment on plain English filings?
- Will the Commission deny acceleration of a filing if it does not comply with the plain English rule?

We address these concerns in the following three sections.

A. Liability Concerns

Several comment letters, including those of the American Bar Association and the Securities Industry Association, recommended a voluntary rather than a mandatory approach to improving the readability of prospectuses. These comment letters argued against mandating plain English primarily because of liability concerns.

These comment letters expressed concern that issuers may omit material information in the course of simplifying the language. The comment letters urged us to adopt a safe harbor rule from legal liability to cover the sections of the prospectus that must be in plain English.

Other letters from groups representing public companies and the mutual fund industry stated they believe plain English will not increase their liability. They stated that plain English disclosure should reduce potential liability because it decreases the likelihood that an investor will misunderstand the prospectus.[40]

Using plain English does not mean omitting important information. These rules only require you to disclose information in words investors can understand and in a format that invites them to read the document. For these reasons, we do not believe that a safe harbor rule is necessary or appropriate. We also believe it is inappropriate for you to include language that attempts to create a safe harbor for these sections.

The letters raising liability concerns also questioned whether it is possible to summarize in plain English complex matters covered in the body of the document. We believe the courts will continue to view the summary section,

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[33] See the amendments to Rule 481 under Regulation C, 17 CFR 230.481.

[34] The proposed amendments to Form N–1A are included in Investment Company Act Release No. 22528 (February 27, 1997) and the proposed profile rule is in Investment Company Act Release No. 22529 (February 27, 1997).

[35] We are also adopting amendments to Rule 481 to require plain English legends in fund prospectuses.

[36] The Commission proposed to allow mutual funds a transition period of six months after the effective date of the proposed rules before they would need to comply with the new prospectus disclosure requirements. See Investment Company Act Release Nos. 22528 and 22529 (February 27, 1997).

[37] If you file a registration statement under Rule 462(b), you must comply with new requirements only if they applied to the earlier offering.

[38] 15 U.S.C. 77j(a)(3).

[39] You may read and copy the comment letters and the staff's summary of these letters in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. Ask for File No. S7–3–97.

[40] For example, see the Investment Company Institute's comment letter, dated March 24, 1997.

as its caption indicates, as a highlight of important information in the prospectus. A summary, by its very nature, cannot disclose everything. In determining whether a company has made full disclosure, courts should look at the disclosure in the entire document.

Moreover, a company's failure to include everything in the summary should not trigger automatically the application of the ''buried facts'' doctrine. Under the buried facts doctrine, a court would consider disclosure to be false and misleading only if its overall significance is obscured because material information is ''buried,'' for example, in footnotes or appendices.[41]

The package of rules we are adopting should lead to clearer documents that are easier for investors to understand. We believe that compliance with these requirements will not increase the risk of litigation.

B. Staff Plain English Review and Comment Process

Several comment letters questioned whether the staff's time would be well spent giving comments on grammar. The letters also stated that the staff's past comments have caused many immaterial disclosures and much of the repetition in current prospectuses.

Our staff will focus on whether you disclose material information and whether that disclosure is clear and readable. The staff will not correct grammatical mistakes.

We recognize that a document can still be clear despite the occasional long sentence or use of passive voice. But we have learned from the plain English pilot program that a document becomes clearer and easier to read when its writer uses plain English.

The staff will issue their comments in plain English and avoid requesting repetitive information in the document. If the staff selects your registration statement for a legal and accounting review, the same people who review your document will issue any plain English comments.

Because the format and design of your document play a large part in its readability, we will request paper copies of the plain English sections that you plan to deliver to investors. We are working to upgrade our Electronic Data Gathering Analysis and Retrieval system, EDGAR, to permit the filing of an exact duplicate of the paper copy sent to investors but this may not occur for some time.

C. Requests for Acceleration

Rule 461 currently requires the Commission staff, when presented with a request for acceleration, to consider the accuracy and adequacy of the prospectus that you circulated.[42] The rule also requires the staff to consider whether you have made a bona fide effort to make the prospectus reasonably concise and understandable. We are amending Rule 461 to require the staff to consider also whether you have made a bona fide effort to satisfy the plain English rule in drafting the front part of the prospectus. Because compliance with the plain English rule will facilitate investors' understanding of the prospectus information, we believe it is important that the preliminary prospectus that you circulate to investors complies with the plain English rule.

Comment letters expressed concern that the amendment to Rule 461 could frequently delay the effective date of registration statements. We believe that these concerns are unfounded. The procedures for addressing deficiencies and for granting or denying acceleration requests have worked very well for many years. We believe the continued use of these procedures will work in implementing the plain English rule. If we select your registration statement for review, the staff will give you comments on how to comply with the plain English rule as well as other requirements. You will have the same opportunity you have now to work with the staff to resolve all comments on your document, consistent with your financing schedule.

VIII. Cost-Benefit Analysis

The plain English rule and amendments should improve communications between public companies and investors and promote investor protection. Specifically, we anticipate, and many public comment letters concur, that adopting the plain English rule will:

- Allow investors to make better-informed assessments of the risk and rewards of investment opportunities;
- Reduce the likelihood that investors make investment mistakes because of incomprehensible disclosure documents;
- Reduce investors' costs of investing by lowering the time required to read and understand information;
- Increase consumers' interest in investing by giving them greater confidence in their understanding of investments;
- Reduce the number of costly legal disputes because investors are more likely to better understand disclosure documents; and
- Lower offering costs because investors will ask issuers fewer questions about the offering.

Several comment letters suggested that writing documents in plain English would impose substantial costs on public companies.[43] While there may be some additional costs initially, we expect them to be modest and to diminish over time as firms learn to prepare documents using plain English principles. After a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions. We believe the substantial benefits to investors and the public markets more than justify the phase-in costs.

We base these conclusions, in part, on companies' experiences in the plain English pilot program. To help assess the benefits and costs, we asked nine randomly selected plain English pilot participants, one of which prepared an initial public offering prospectus, about their experiences preparing plain English documents. Six of the nine participants responded, including the initial public offering issuer. All of the participants agreed that investors benefit from clearer, more readable, less redundant disclosure. Specifically, several predicted that investor misunderstandings and mistakes would decline. They did not generally believe, however, that writing their disclosures in plain English would reduce their liability for disclosures. The consensus was that investors file lawsuits on the basis of disclosure materiality, not brevity or wording. Several participants found, however, that they spent less time answering investors' questions when they wrote their documents in plain English.[44]

In terms of the costs of writing documents in plain English, all of the responding participants spent more time writing their documents in plain English than they otherwise would have

[41] See *Gould* v. *American Hawaiian Steamship Company*, 331 F. Supp. 981 (D. Del. 1971); *Kohn* v. *American Metal Climax, Inc.*, 322 F. Supp. 1331 (E.D. Pa. 1970), *modified*, 458 F.2d 255 (3d Cir. 1972).

[42] See Rule 461 of Regulation C, 17 CFR 230.461.

[43] PSA The Bond Market Trade Association, in their comment letter dated March 24, 1997, for example, estimated that costs ''could increase by up to 50 percent.''

[44] For example, one participant indicated that they spent 12 percent less time answering investors' questions, while another spent 20 percent less time.

if they used conventional language.[45] Pilot participants found that legal and technical writing costs rose for plain English filings by approximately 15 percent.[46] Because legal and technical writing comprises approximately 48 percent of the total burden hours necessary to complete a registration statement (with accounting comprising the other 52 percent),[47] we estimate that total burden hours will rise by approximately seven percent in the first year.

The table below shows the current and estimated burden hours per filing, the estimated change in burden hours per filing, and the number of forms filed in 1997 by form type.[48] The information in the table indicates that we estimate public companies will require on average 60 additional hours per filing to comply with the plain English requirements in the first year. At $120 per hour,[49] this translates to an added cost in the first year of approximately $7,200 per filing.[50] Based on pilot program participants' experiences,[51] we expect the number of hours and cost to fall in the following year to the current level as firms gain experience with the plain English principles. We anticipate the cost to repeat filers to fall even sooner.

Form	Estimated burden hours/filing before plain English rule	Estimated burden hours/filing after plain English rule	Change in estimated burden hours/filing	Filings/year[52]	Change in estimated burden hours by filing type after plain English rule
S–1	1,267	1,358	91	1,067	97,097
S–2	470	504	34	145	4,930
S–3	398	427	29	3,137	90,973
S–4	1,233	1,322	89	2,044	181,916
F–1/S–20	1,868	2,002	134	162	21,708
F–2	559	599	40	3	120
F–3	166	178	12	220	2,640
F–4	1,308	1,402	94	243	22,842
S–11	147	158	11	68	748
SB–1	710	761	51	8	408
SB–2	876	939	63	434	27,342
Total	.....	.....	.....	7,531	450,724

[52] These estimates are based on the number of such filings made in calendar year 1997.

We believe the estimate of seven-percent higher cost in the first year is somewhat overstated because it is based on the experiences of pilot participants who did not have models to follow. The time required for future registrants to comply with the requirements should be lower. To help reduce compliance time, the staff is including a list of filings by pilot participants and the information issuers need to locate those filings. The staff is also issuing a handbook on how to prepare plain English documents and will hold workshops to help public companies, their counsel, and underwriters comply with the rules. We also anticipate that public companies' legal counsel, who will gain experience from all their clients' transactions, will help to speed the transition to plain English. Finally, some firms filed multiple registration statements in 1997 and we applied the same burden hour increase to all filings. We believe that required compliance time for firms' later filings should be lower than earlier filings as companies gain experience writing in plain English.

These results are consistent with those found by the American Society of Corporate Secretaries, which surveyed the 57 member companies represented on its Securities Law Committee. The twelve members who had prepared at least one plain English document predicted no ''material change in annual burden reporting or hours.'' [53] Similarly, Baltimore Gas and Electric Company incurred no additional cost once the company learned the process.[54]

[45] Four of the six participants spent 10 percent longer; the initial public offering issuer spent 15 percent longer; and one participant took ''significantly longer.'' For the participant that took significantly longer, we received two estimates—one from the company of 75 percent longer and one from the firm's legal counsel of 200 percent longer.

[46] This estimate is based on responses to a survey of nine plain English pilot program participants and on a summary of the results of an informal survey of pilot participants conducted by the American Society of Corporate Secretaries. See Public Comment letter dated March 24, 1997.

[47] The Division of Corporation Finance collected Item 511 of Regulation S–K expense information from approximately 1500 registration statements filed between January 1 and December 31, 1995. Assuming legal costs averaged $150/hour and accounting costs averaged $75/hour, the survey indicates that approximately 48 percent of burden hours are for legal and technical writing, while 52 percent are accounting-related. Because the rule and amendments apply predominately to legal and technical writing, we apply the increased burden to those hours.

[48] We do not anticipate that the plain English requirements will change the burden hours or cost for preparing Form N–2. Consequently, we do not include Form N–2 in the table.

[49] We anticipate that some firms will comply, in part, with the plain English requirements using in-house counsel, which will lower hourly costs.

[50] In 1997, registrants filed 7,531 filings. At $7,200 per filing, the total increase in cost would be approximately $54 million.

[51] Four of the six participants believed that once they developed plain English formats, it would take them less time to write a document in plain English than in the conventional language. One participant predicted that writing documents in plain English would require no additional time after the initial effort. The other participant did not comment directly.

[53] See American Society of Corporate Secretaries Public Comment letter dated March 24, 1997.

[54] See Baltimore Gas and Electric Company Public Comment letter dated March 26, 1997.

One benefit generally found by pilot program participants was that document length was shortened on average by 11 percent.[55] Given that the average length of an S–1 prospectus is approximately 116 pages, this decline would result in a 13-page reduction. For an S–3 prospectus, whose average length is 52 pages, the decline would save 6 pages. And the length of an S–4 prospectus, which averages 219 pages, would fall by 24 pages.[56] Where plain English shortened documents, several responding participants estimated lower printing and distribution costs. Even if costs dropped by only five percent, firms would save approximately $3,160 per filing. In aggregate, firms would save approximately $24 million per year—savings that could continue for as long as firms comply with the plain English requirements.[57]

In summary, while all of the participants that answered our questions incurred some additional document preparation costs, the majority estimated them to be low and predicted that they would fall over time. The participants anticipated little added, and perhaps even lower, overall cost. Some even predicted they might save money on printing and distribution costs and time answering investors' questions. Based on the experiences of pilot program participants, we believe that the substantial benefits to investors of plain English and the on-going cost savings to issuers justify the short-term cost to public companies of learning to prepare documents in plain English.

IX. Final Regulatory Flexibility Analysis

The staff has prepared this Final Regulatory Flexibility Analysis in accordance with Section 603 of the Regulatory Flexibility Act (5 U.S.C. 603). This analysis relates to revisions of Rules 421, 461, and 481 of Regulation C and Items 101, 501, 502, 503, and 508 of Regulations S–K and S–B to implement the Commission's plain English initiative. The Commission is also adopting minor amendments to Forms S–2, S–3, S–4, S–20, F–2, F–3, and F–4 under the Securities Act and Form N–2 under the Investment Company Act.

Need for and Objectives of Plain English Rules

In August 1995, Chairman Arthur Levitt organized the Task Force on Disclosure Simplification to find ways to simplify the disclosure process and increase the effectiveness and efficiency of capital formation where consistent with investor protection. In its final report to the Commission, the Task Force suggested that the Commission require public companies to write certain parts of prospectuses in plain English.[58] The Commission responded in January 1997 by proposing a rule and several amendments that required public companies to write the front of prospectuses using plain English principles.[59] The amendments revised current rules and forms to eliminate certain language requirements in the front of prospectuses and relocate highly technical language within the prospectus. The Commission proposed these rules to enhance the clarity and conciseness of prospectuses.

The Commission received 45 comment letters from 43 entities in response to the proposing release.[60] The commentators generally expressed strong support for the plain English proposals, although several expressed concerns with specific provisions and some suggested alternative approaches for addressing particular issues. The Commission is adopting the plain English proposals with minor modifications that clarify provisions and reflect the suggestions of some comment letters and the plain English pilot program participants. These rules will make prospectuses simpler, clearer, more useful, and, we hope, more widely read.

The amendments will be adopted pursuant to Sections 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a), and 23(a) of the Exchange Act, and Sections 8, 24, 30, 31, and 38 of the Investment Company Act of 1940.

Small Entities Subject to the Rules

For the purposes of the Regulatory Flexibility Act, the term ''small business,'' as used in reference to a public company other than an investment company, is defined by Rule 157 under the Securities Act as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and is engaged or proposing to engage in small business financing.[61] An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed $5 million. The Securities Exchange Act defines a ''small business'' issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less. When used with respect to an issuer that is an investment company, the term is defined as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.[62]

The Commission estimates that approximately 1,100 of approximately 12,700 Exchange Act reporting companies and 800 investment companies of approximately 3,700 active registered investment companies currently satisfy the definition of ''small business,'' all of which will be subject to the plain English requirements. We have no reliable way, however, to determine how many businesses may become subject to Commission reporting obligations in the future, or may otherwise be impacted by the plain English requirements.

Significant Issues Raised by Public Comment

The Commission received no requests for the Initial Regulatory Flexibility Analysis and received no comments specifically in response to its request for information about the impact of the rule and amendments on small businesses. Nine comment letters, however, discussed the costs and benefits to public companies in general. Six believed that costs would generally be low and temporary as firms learn to write in plain English. Three believed that the costs would be more significant. These costs are discussed in greater detail in the next subsection. The Commission's efforts to minimize the compliance costs to all reporting companies, both large and small, are discussed in the final subsection of this Final Regulatory Flexibility Analysis.

[55] One of the six participants indicated that writing in plain English shortened their document by 5 percent; one by 10 to 15 percent; one by 15 percent; and one by 35 percent. Interestingly, the pilot participant who spent 75 percent more time on its plain English prospectus shortened its prospectus the largest amount—35 percent. One found no appreciable difference, and one estimated that plain English increased document length by one percent.

[56] The staff randomly selected prospectuses filed in 1997 to estimate document length.

[57] The Division of Corporation Finance collected Item 511 of Regulation S–K expense information from approximately 1500 registration statements filed between January 1 and December 31, 1995. Printing expenses averaged $63,200 per filing. Assuming five-percent cost savings, public companies would save $3,160 per filing or a total of about $24 million in printing and mailing costs on 7,531 filings per year.

[58] See *Report of the Task Force on Disclosure Simplification* (March 1996).

[59] Securities Act Release No. 33–7380.

[60] A summary of comments is available, along with the comment letters, in Public File No. S7–3–97. The file is available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street N.W., Washington, D.C. 20549.

[61] 17 CFR 230.157.

[62] 17 CFR 240.0–10.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

The plain English rules and amendments do not affect the substance of the disclosures that public companies must make. They do not impose any new recordkeeping requirements or require reporting of additional information. We anticipate, however, that there will be a temporary increase in cost that will diminish over time as firms learn to prepare documents using plain English principles. Thus, after a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions.

We base these conclusions, in part, on companies' experiences in the plain English pilot program. We solicited information about firms' experiences by questioning a group of pilot participants. Based on their responses, discussed in detail in Section VIII, we anticipate a temporary increase in cost that will diminish over time as firms learn to prepare documents using plain English principles. While none of the pilot participants specifically qualified as a ''small business,'' the company that wrote its initial public offering prospectus in plain English had a favorable experience.

In addition, we requested information about the impact of the plain English requirements on small businesses in the proposing release. While no one commented specifically on the burden to small firms, several letters indicated that the additional cost of writing in plain English would be low and would diminish after the initial effort of learning to write in plain English. Some commentators even predicted savings. This evidence contrasts, however, with three letters expressing concern that writing in plain English would increase document preparation costs and lengthen documents. While we considered these concerns, experience from the pilot program suggests that phase-in costs will be low and that documents will be shorter and easier to read and understand.

Agency Action To Minimize Effect on Small Businesses

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the plain English rules and amendments, we considered several alternatives, including (a) establishing different compliance and reporting requirements for small businesses; and (b) using performance rather than design standards, and (c) exempting small businesses from all or part of the requirements. We do not believe, however, that these alternatives are appropriate. First, these alternatives would be inconsistent with our statutory mandate to require prospectuses to disclose fully and fairly all material information to investors. Second, these alternatives would significantly dilute or negate the important benefits of plain English disclosure to investors. For these reasons, we also believe there would be no benefit in providing separate requirements for small issuers based on the use of performance rather than design standards.

We have tried before, through interpretive advice and other means, to address the problems with current prospectus disclosure, which too often includes arcane, needlessly complex, and incomprehensible language. These earlier measures have not resulted in widespread improvement in prospectus readability. Therefore, we believe the plain English requirements are necessary to improve communication between public companies and investors, particularly given the relatively low compliance burden. In addition, we believe the rules and amendments should apply equally to all entities required to disclose information under the Securities Act to enhance protection of all investors.

The plain English principles are generally broad statements that provide registrants flexibility in how to disclose information. Thus, there are a variety of ways in which registrants, including small businesses, can use the principles and guidance in making their disclosures. Modifications of the plain English proposals by the Commission will reduce the short-term cost to small issuers. Based on suggestions in several comment letters, the Commission is not adopting limitations on the length of summaries, limitations on the number of risk factors or the requirement that companies prioritize risk factors. To provide compliance assistance to both small and large issuers, the release includes a list of filings by pilot participants and the information issuers need to locate those filings. The staff is also issuing a handbook on how to prepare plain English documents and will hold workshops to help small and large issuers, their counsels, underwriters, and others comply with the rules. Finally, the Commission is minimizing the impact by delaying the effective date of the rules until October 1, 1998.

X. Paperwork Reduction Act

The plain English rule and amendments affect several regulations and forms that contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[63] In the proposing release, the Commission stated its belief that the plain English rule and amendments would not result in a substantive or material change to the affected collections of information. Nevertheless, the Commission solicited comment on whether the rule and amendments would materially affect the burden on public companies and mutual funds that prepare prospectuses. Because several comment letters indicated that the burden would increase, at least in the short term, the Commission has determined to submit the rule and amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The Commission is amending Rules 421, 461, and 481 of Regulation C and Items 101, 501, 502, 503, and 508 of Regulations S–K and S–B. The Commission is also adopting minor amendments to Forms S–2, S–3, S–4, S–20, F–2, F–3, and F–4 under the Securities Act and Form N–2 under the Investment Company Act as a part of the plain English initiative.[64]

The rule and amendments require public companies to write information included in the front of prospectuses the cover page, summary, and risk factors section—in everyday language that investors can understand. The changes also codify existing Commission interpretive advice and eliminate requirements no longer deemed useful. The requirements do not affect the substance of the disclosures that registrants must make. They do not impose any new recordkeeping requirements or require reporting of additional information.

As discussed in detail in Section VII, we anticipate that there will be a temporary increase in burden that will diminish over time as firms learn to prepare documents using plain English principles. As indicated in the Cost/Benefit Analysis table, we estimate that

[63] 44 U.S.C. 3501 *et seq.*

[64] Regulations S–K, S–B, and C do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is currently assigned one burden hour. The burden hours imposed by the disclosure regulations are currently included in the estimates for the forms that refer to the regulations.

public companies will require on average 60 additional burden hours per filing or 450,724 hours in total to comply with the plain English requirements in the first year. We then expect burden hours to fall to their current level. Thus, after a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions. The added burden will be reflected in the estimated burden hours for Regulation C.[65]

The information collection requirements imposed by the forms and regulations are mandatory to the extent that a company elects to do a registered offering. The information is made publicly available. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment on the following:

- Whether the changes in the collection of information are necessary for the proper performance of the function of the agency;
- The accuracy of the Commission's estimate of the burden of the changes to the collection of information;
- The quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Anyone desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–3–97. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

[65] Regulations S–K and S–B will continue to show an estimated burden hour of one.

XI. Statutory Authority

The rule amendments are proposed under Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a) and 23(a) of the Exchange Act, and Sections 8, 24, 30, 31 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 228, 229, 230, 239, and 274

Investment companies, Reporting and recordkeeping requirements, Securities, and Investment Companies.

Text of the Amendments

For the reasons discussed in the preamble, the Securities and Exchange Commission amends Title 17, Chapter 11 of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78ll, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.101 to add paragraphs (c) and (d) to read as follows:

§ 228.101 (Item 101) Description of Business.

* * * * *

(c) *Reports to security holders.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(1) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;

(2) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC; and

(3) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available;

(d) *Canadian Issuers.* Provide the information required by Items 101(f)(2) and 101(g) of Regulation S–K (§ 229.101(f)(2) and (g)).

3. Section 228.501 is revised to read as follows:

§ 228.501 (Item 501) Front of registration statement and front cover of prospectus.

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) Limit the outside front cover page of the prospectus to one page and include the following information:

(1) The registrant's name. A foreign registrant also must give the English translation of its name;

(2) The title, amount, and description of securities offered. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement;

(3) If there are selling security holders, a statement to that effect;

(4) Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) Any legend or statement required by the law of any state in which the securities are offered;

(7) A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed on the adequacy or accuracy of the disclosures in the prospectus. Also make clear that any representation to the contrary is a criminal offense. You may use one of the following or other clear, plain language:

Example A: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of the prospectus. Any representation to the contrary is a criminal offense.

Example B: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete.

Any representation to the contrary is a criminal offense.

(8) If you are not a reporting company and the preliminary prospectus will be circulated, as applicable:

(i) A bona fide estimate of the range of the maximum offering price and maximum number of shares or units offered; or

(ii) A bona fide estimate of the principal amount of debt securities offered;

(9)(i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements;

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and whether or not there are any arrangements to place the funds in an escrow, trust, or similar account; and

(iv) If you offer the securities for cash, the price to the public for the securities, the underwriting discounts and commissions, and proceeds to the registrant or other persons. Show the information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading;

(10) If the prospectus will be used before the effective date of the registration statement, a prominent statement that:

(i) The information in the prospectus will be amended or completed;

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(iii) The securities may not be sold until the registration statement becomes effective; and

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. You may use the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information in paragraph (a)(10) of this section; and

(12) The date of the prospectus.

(b) [Reserved]

4. Section 228.502 is revised to read as follows:

§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S-B (17 CFR 228.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically;

(b) *Dealer prospectus delivery obligation.* If applicable to your offering, on the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. You may use the following or other clear, plain language:

Dealer Prospectus Delivery Obligation

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

5. By revising § 228.503 to read as follows:

§ 228.503 (Item 503) Summary Information and Risk Factors.

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Summary.* Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English.

Instruction to paragraph 503(a)

The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) *Address and phone number.* Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) *Risk factors.* (1) Discuss in a section captioned ''Risk Factors'' any factors that make the offering speculative or risky. The factors may include, among other things, the following:

(i) Your lack of an operating history;

(ii) Your lack of recent profits from operations;

(iii) Your poor financial position;

(iv) Your business or proposed business; or

(v) The lack of a market for your common equity securities.

(2) The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor discussion must immediately follow the cover page or the pricing information that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on § 230.430A(a) of this chapter.

6. Section 228.508 is amended to revise the heading of paragraph (a), add two sentences to the end of paragraph (a) and revise paragraph (j) to read as follows:

§ 228.508 (Item 508) Plan of Distribution.

(a) *Underwriters and underwriting obligations.* * * * The small business issuer must disclose the offering expenses specified in Item 511 of this Regulation S–B (17 CFR 228.511). If there is an arrangement under which the underwriter may purchase additional shares in connection with the offering, such as an over-allotment option, describe that arrangement and disclose information on the total offering price, underwriting discounts and commissions, and total proceeds assuming the underwriter purchases all

of the shares subject to that arrangement.

* * * * *

(j) *Stabilization and other transactions.* (1) Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose the amount of securities bought, the prices at which they were bought, and the period within which they were bought. If you use § 230.430A of this chapter, the final prospectus must contain information on the stabilizing transactions that took place before the public offering price was set; and

(3) If you are making a warrant or rights offering of securities to existing security holders and the securities not purchased by existing security holders are to be reoffered to the public, disclose the following information in the reoffer prospectus:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities purchased by the underwriter during the offering period;

(iv) The amount of the offered securities sold by the underwriter during the offering period and the price or range of prices at which the securities were sold; and

(v) The amount of the offered securities that will be reoffered to the public and the offering price.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

7. The general authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

8. By amending § 229.101 to add paragraphs (e), (f), and (g) before ''Instructions to Item 101'' to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Available information.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(1) Whether you file reports with the Securities and Exchange Commission. If you are reporting company, identify the reports and other information you file with the SEC.

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available;

(f) *Reports to security holders.* Disclose the following information in any registration statement you file under the Securities Act:

(1) If the SEC's proxy rules or regulations, or stock exchange requirements, do not require you to send an annual report to security holders or to holders of American depository receipts, describe briefly the nature and frequency of reports that you will give to security holders. Specify whether the reports that you give will contain financial information that has been examined and reported on, with an opinion expressed ''by'' an independent public or certified public accountant.

(2) For a foreign private issuer, if the report will not contain financial information prepared in accordance with U.S. generally accepted accounting principles, you must state whether the report will include a reconciliation of this information with U.S. generally accepted accounting principles.

(g) *Enforceability of civil liabilities against foreign persons.* Disclose the following if you are a foreign private issuer filing a registration statement under the Securities Act:

(1) Whether or not investors may bring actions under the civil liability provisions of the U.S. federal securities laws against the foreign private issuer, any of its officers and directors who are residents of a foreign country, any underwriters or experts named in the registration statement that are residents of a foreign country, and whether investors may enforce these civil liability provisions when the assets of the issuer or these other persons are located outside of the United States. The disclosure must address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in U.S. courts against foreign persons based upon the civil liability provisions of the U.S. federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of U.S. courts based upon the civil liability provisions of the U.S. federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the U.S. federal securities laws.

(2) If you provide this disclosure based on an opinion of counsel, name counsel in the prospectus and file as an exhibit to the registration statement a signed consent of counsel to the use of its name and opinion.

* * * * *

9. By revising § 229.501 to read as follows:

§ 229.501 (Item 501) Forepart of Registration Statement and Outside Front Cover Page of Prospectus.

The registrant must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Front cover page of the registration statement.* Where appropriate, include the delaying amendment legend from

§ 230.473 of Regulation C of this chapter.

(b) *Outside front cover page of the prospectus.* Limit the outside cover page to one page. If the following information applies to your offering, disclose it on the outside cover page of the prospectus.

(1) *Name.* The registrant's name. A foreign registrant must give the English translation of its name.

Instruction to paragraph 501(b)(1).

If your name is the same as that of a company that is well known, include information to eliminate any possible confusion with the other company. If your name indicates a line of business in which you are not engaged or you are engaged only to a limited extent, include information to eliminate any misleading inference as to your business. In some circumstances, disclosure may not be sufficient and you may be required to change your name. You will not be required to change your name if you are an established company, the character of your business has changed, and the investing public is generally aware of the change and the character of your current business.

(2) *Title and amount of securities.* The title and amount of securities offered. Separately state the amount of securities offered by selling security holders, if any. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Give a brief description of the securities except where the information is clear from the title of the security. For example, you are not required to describe common stock that has full voting, dividend and liquidation rights usually associated with common stock.

(3) *Offering price of the securities.* Where you offer securities for cash, the price to the public of the securities, the underwriter's discounts and commissions, the net proceeds you receive, and any selling shareholder's net proceeds. Show this information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading:

Instructions to paragraph 501(b)(3)

1. If a preliminary prospectus is circulated and you are not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, provide, as applicable:

(A) A bona fide estimate of the range of the maximum offering price and the maximum number of securities offered; or

(B) A bona fide estimate of the principal amount of the debt securities offered.

2. If it is impracticable to state the price to the public, explain the method by which the price is to be determined. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to the market price, indicate the market and market price of the securities as of the latest practicable date.

3. If you file a registration statement on Form S–8, you are not required to comply with this paragraph (b)(3).

(4) *Market for the securities.* Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) *Risk factors.* A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) *State legend.* Any legend or statement required by the law of any state in which the securities are to be offered. You may combine this with any legend required by the SEC, if appropriate;

(7) *Commission legend.* A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosures in the prospectus and that any contrary representation is a criminal offense. You may use one of the following or other clear, plain language:

Example A: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(8) *Underwriting.* (i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements. You may use any clear, concise, and accurate description of the underwriting arrangements. You may use the following descriptions of underwriting arrangements where appropriate:

Example A: *Best efforts offering.* The underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered.

Example B: *Best efforts, minimum-maximum offering.* The underwriters must sell the minimum number of securities offered (insert number) if any are sold. The underwriters are required to use only their best efforts to sell the maximum number of securities offered (insert number).

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and any arrangements to place the funds in an escrow, trust, or similar account. If you have not made any of these arrangements, state this fact and describe the effect on investors;

(9) *Date of prospectus.* The date of the prospectus;

(10) *Prospectus ''Subject to Completion'' legend.* If you use the prospectus before the effective date of the registration statement, a prominent statement that:

(i) The information in the prospectus will be amended or completed;

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(iii) The securities may not be sold until the registration statement becomes effective; and

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. The legend may be in the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information and legend in paragraph (b)(10) of this section.

10. By revising § 229.502 to read as follows:

§ 229.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.

The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S–K (17 CFR 229.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically.

(b) *Dealer prospectus delivery obligation.* On the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. If you do not know the expiration date on the effective date of the registration statement, include the expiration date in the copy of the prospectus you file under § 230.424(b) of this chapter. You do not have to include this information if dealers are not required to deliver a prospectus under § 230.174 of this chapter or Section 24(d) of the Investment Company Act (15 U.S.C. 80a–24). You may use the following or other clear, plain language:

Dealer Prospectus Delivery Obligation

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

11. By revising § 229.503 to read as follows:

§ 229.503 (Item 503) Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges.

The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Prospectus summary.* Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English.

Instruction to paragraph 503(a).

The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) *Address and telephone number.* Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) *Risk factors.* Where appropriate, provide under the caption ''Risk Factors'' a discussion of the most significant factors that make the offering speculative or risky. This discussion must be concise and organized logically. Do not present risks that could apply to any issuer or any offering. Explain how the risk affects the issuer or the securities being offered. Set forth each risk factor under a subcaption that adequately describes the risk. The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on § 230.430A(a) of this chapter. The risk factors may include, among other things, the following:

(1) Your lack of an operating history;

(2) Your lack of profitable operations in recent periods;

(3) Your financial position;

(4) Your business or proposed business; or

(5) The lack of a market for your common equity securities or securities convertible into or exercisable for common equity securities.

(d) *Ratio of earnings to fixed charges.* If you register debt securities, show a ratio of earnings to fixed charges. If you register preference equity securities, show the ratio of combined fixed charges and preference dividends to earnings. Present the ratio for each of the last five fiscal years and the latest interim period for which financial statements are presented in the document. If you will use the proceeds from the sale of debt or preference securities to repay any of your outstanding debt or to retire other securities and the change in the ratio would be ten percent or greater, you must include a ratio showing the application of the proceeds, commonly referred to as the pro forma ratio.

Instructions to paragraph 503(d)

1. *Definitions.* In calculating the ratio of earnings to fixed charges, you must use the following definitions:

(A) *Fixed charges.* The term ''fixed charges'' means the sum of the following: (a) interest expensed and capitalized, (b) amortized premiums, discounts and capitalized expenses related to indebtedness, (c) an estimate of the interest within rental expense, and (d) preference security dividend requirements of consolidated subsidiaries.

(B) *Preference security dividend.* The term ''preference security dividend'' is the amount of pre-tax earnings that is required to pay the dividends on outstanding preference securities. The dividend requirement must be computed as the amount of the dividend divided by (1 minus the effective income tax rate applicable to continuing operations).

(C) *Earnings.* The term ''earnings'' is the amount resulting from adding and subtracting the following items. Add the following: (a) Pre-tax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, (b) fixed charges, (c) amortization of capitalized interest, (d) distributed income of equity investees, and (e) your share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. From the total of the added items, subtract the following: (a) interest capitalized, (b) preference security dividend requirements of consolidated subsidiaries, and (c) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that you account for using the equity method of accounting. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

2. *Disclosure.* Disclose the following information when showing the ratio of earnings to fixed charges:

(A) *Deficiency.* If a ratio indicates less than one-to-one coverage, disclose the dollar amount of the deficiency.

(B) *Pro forma ratio.* You may show the pro forma ratio only for the most recent fiscal year and the latest interim period. Use the net change in interest or dividends from the refinancing to calculate the pro forma ratio.

(C) *Foreign private issuers.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. A foreign private issuer must show the ratio based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles if this ratio is materially different.

(D) *Summary Section.* If you provide a summary or similar section in the prospectus, show the ratios in that section.

3. *Exhibit.* File an exhibit to the registration statement to show the figures used to

calculate the ratios. See paragraph (b)(12) of Item 601 of Regulation S–K (17 CFR 229.601(b)(12)).

12. By amending § 229.508 by revising paragraphs (e) and (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

(e) *Underwriter's compensation.* Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.

Instructions to paragraph 508(e)

1. The term ''commissions'' is defined in paragraph (17) of Schedule A of the Securities Act. Show separately in the table the cash commissions paid by the registrant and selling security holders. Also show in the table commissions paid by other persons. Disclose any finder's fee or similar payments in the table.

2. Disclose the offering expenses specified in Item 511 of Regulation S–K (17 CFR 229.511).

3. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Where the underwriter has such an arrangement, present maximum-minimum information in a separate column to the table, based on the purchase of all or none of the shares subject to the arrangement. Describe the key terms of the arrangement in the narrative.

* * * * *

(l) *Stabilization and other transactions.* (1) Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose the amount of securities bought, the prices at which they were bought and the period within which they were bought. If you use § 230.430A of this chapter, the prospectus you file under § 230.424(b) of this chapter or include in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price; and

(3) If you are making a warrants or rights offering of securities to existing security holders and any securities not purchased by existing security holders are to be reoffered to the public, disclose in a supplement to the prospectus or in the prospectus used in connection with the reoffering:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities subscribed for by the underwriter during the offering period;

(iv) The amount of the offered securities sold during the offering period by the underwriter and the price or price ranges at which the securities were sold; and

(v) The amount of the offered securities that will be reoffered to the public and the public offering price.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

13. The general authority citation for part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

14. By amending § 230.421 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 230.421 Presentation of information in prospectuses.

* * * * *

(b) You must present the information in a prospectus in a clear, concise and understandable manner. You must prepare the prospectus using the following standards:

(1) Present information in clear, concise sections, paragraphs, and sentences. Whenever possible, use short, explanatory sentences and bullet lists;

(2) Use descriptive headings and subheadings;

(3) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(4) Avoid legal and highly technical business terminology.

Note to § 230.421(b):

In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague ''boilerplate'' explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

* * * * *

(d)(1) To enhance the readability of the prospectus, you must use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors section.

(2) You must draft the language in these sections so that at a minimum it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(3) In designing these sections or other sections of the prospectus, you may include pictures, logos, charts, graphs, or other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that present the data in an understandable manner. Any presentation must be consistent with the financial statements and non-financial information in the prospectus. You must draw the graphs and charts to scale. Any information you provide must not be misleading.

Instruction to § 230.421

You should read Securities Act Release No. 33–7497 (January 28, 1998) for information on plain English principles.

15. By revising paragraph (b)(1) of § 230.461 to read as follows.

§ 230.461 Acceleration of effective date.

* * * * *

(b) * * *

(1) Where there has not been a bona fide effort to make the prospectus reasonably concise, readable, and in compliance with the plain English requirements of Rule 421(d) of Regulation C (17 CFR 230.421(d)) in order to facilitate an understanding of the information in the prospectus.

* * * * *

16. Revise § 230.481 to read as follows:

§ 230.481 Information required in prospectuses.

Disclose the following in registration statements prepared on a form available solely to investment companies registered under the Investment Company Act of 1940 or in registration statements filed under the Act for a company that has elected to be regulated as a business development company under Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54—80a–64):

(a) *Facing page.* Indicate the approximate date of the proposed sale of the securities to the public.

(b) *Outside front cover page.* If applicable, include the following in plain English as required by § 230.421(d):

(1) *Commission legend.* Provide a legend that indicates that the Securities and Exchange Commission has not approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following or other clear and concise language:

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(2) *''Subject to Completion'' legend.*

(i) If a prospectus or Statement of Additional Information will be used before the effective date of the registration statement, include on the outside front cover page of the prospectus or Statement of Additional Information, a prominent statement that:

(A) The information in the prospectus or Statement of Additional Information will be amended or completed;

(B) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(C) The securities may not be sold until the registration statement becomes effective; and

(D) In a prospectus, that the prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted, or in a Statement of Additional Information, that the Statement of Additional Information is not a prospectus.

(ii) The legend may be in the following language or other clear and understandable language:

The information in this prospectus (or Statement of Additional Information) is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus (or Statement of Additional Information) is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(iii) In the case of a prospectus that omits pricing information under § 230.430A, provide the information and legend in paragraph (b)(2) of this section if the prospectus or Statement of Additional Information is used before the initial public offering price is determined.

(c) *Table of contents.* Include on either the outside front, inside front, or outside back cover page of the prospectus, a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include this table of contents immediately following the cover page in any prospectus delivered electronically.

(d) *Stabilization and Other Transactions.* (1) Indicate on the front cover page of the prospectus if the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, and state the amount of additional shares the underwriter may purchase under the arrangement. Provide disclosure in the prospectus that briefly describes any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transactions that affect the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose in the prospectus the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that § 230.430A of this chapter is used, the prospectus filed under § 230.497(h) or included in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price shown in the prospectus; and

(3) If you are making a warrant or rights offering of securities to existing security holders and the securities not purchased by existing security holders are to be reoffered to the public, disclose in the prospectus used in connection with the reoffering:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities subscribed for by the underwriters during the offering period;

(iv) The amount of the offered securities sold during the offering period by the underwriters and the price or range of prices at which the securities were sold; and

(v) The amount of the offered securities to be reoffered to the public and the public offering price.

(e) *Dealer prospectus delivery obligations.* On the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Act (15 U.S.C. 77d(3)) and § 230.174. If the expiration date is not known on the effective date of the registration statement, include the expiration date in the copy of the prospectus filed under § 230.497. This information need not be included if dealers are not required to deliver a prospectus under § 230.174 or Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–24). Use the following or other clear, plain language:

Dealer Prospectus Delivery Obligation

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

(f) *Electronic distribution.* Where a prospectus is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

18. By amending Form S–2 (referenced in § 239.12), Item 12 to add paragraph (d) to read as follows:

(**Note:** The text of Form S–2 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form S–2

Registration Statement Under the Securities Act of 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d)(1) You must state (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(d)(1)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must (i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

19. By amending Form S–3 (referenced in § 239.13) Item 12 to add paragraph (c) before the instruction to read as follows:

(**Note:** The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(c)(1) You must state (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(c)(1)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must (i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

20. By amending Form S–20 (referenced in § 239.20) to revise the reference in Item 1 ''Item 502(f) of Regulation S–K [§ 229.502(f) of this chapter]'' to read ''Item 101(g) of Regulation S–K [§ 229.101(g) of this chapter].''

(**Note:** The text of Form S–20 does not, and this amendment will not, appear in the Code of Federal Regulations)

21. By amending Form S–4 (referenced in § 239.25) to revise Item 2 and adding paragraph (c) to Item 11 and paragraph (d) to Item 13 to read as follows:

(**Note:** The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Provide the information required by Item 502 of Regulation S–K. In addition, on the inside front cover page, you must state (1) that the prospectus incorporates important business and financial information about the company that is not included in or delivered with the document; and

(2) that this information is available without charge to security holders upon written or oral request. Give the name, address, and telephone number to which security holders must make this request. In addition, you must state that to obtain timely delivery, security holders must request the information no later than five business days before the date they must make their investment decision. Specify the date by which security holders must request this information. You must highlight this statement by print type or otherwise.

Note to Item 2.

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any

exhibits that are specifically incorporated by reference in that information.

* * * * *

Item 11. Incorporation of Certain Information by Reference.

* * * * *

(c) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

Item 13. Incorporation of Certain Information by Reference

* * * * *

(d) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

22. By amending Form F–2 (referenced in § 239.32) to revise Item 12 to read as follows:

(**Note:** The text of Form F–2 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form F–2

Registration Statement Under the Securities Act of 1933

* * * * *

Item 12. Information with respect to the Registrant.

(a) You must state (1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester; and

(4) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(a)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(b) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

23. By amending Form F–3 (referenced in § 239.33) by adding paragraphs (d) and (e) to Item 12 before the instruction to read as follows:

(**Note:** The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) You must state (1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester; and

(4) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(d)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(e) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

24. By amending Form F–4 (referenced in § 239.34) to revise Item 2 and add paragraph (b) to Item 11 and paragraph (c) to Item 13 to read as follows:

(**Note:** The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form F–4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Provide the information required by Item 502 of Regulation S–K. In addition, on the inside front cover page, you must state (1) that the prospectus incorporates important business and financial information about the company that is not included in or delivered with the document; and

(2) that this information is available without charge to security holders upon written or oral request. Give the name, address, and telephone number to which security holders must make this

request. In addition, you must state that to obtain timely delivery, security holders must request the information no later than five business days before the date they must make their investment decision. Specify the date by which security holders must request this information. You must highlight this statement by print type or otherwise.

Note to Item 2.

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

* * * * *

Item 11. Incorporation of Certain Information by Reference

* * * * *

(b) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

Item 13. Incorporation of Certain Information by Reference

* * * * *

(c) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

25. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

26. Amend Form N–2 (referenced in § 274.11a–1) to revise Item 2, Item 3, and Item 14 to read as follows:

(**Note:** The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.)

Form N–2

* * * * *

Item 2. Cover Pages; Other Offering Information

1. Disclose whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identify the trading symbol(s) for those securities, on the inside front or outside back cover page of the prospectus unless the information appears on the front cover page.

2. Provide the information required by paragraph (d) of Rule 481 under the Securities Act [17 CFR 230.481(d)] in an appropriate place in the prospectus.

3. Provide the information required by paragraph (e) of Rule 481 under the Securities Act [17 CFR 230, 481(d)] on the outside back cover page of the prospectus.

Item 3. Fee Table and Synopsis

* * * * *

3. In the case of a business development company, include the information required by Item 101(e) of Regulation S–K [17 CFR 229.101(e)] (concerning reports and other information filed with the SEC).

* * * * *

Item 14. Cover Page

1. The outside cover page must contain the following information:

* * * * *

(e) The statement required by paragraph (b)(2) of Rule 481 under the Securities Act [17 CFR 230.481(b)(2)].

* * * * *

By the Commission.

Dated: January 28, 1998.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A and B to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Charts on Amendments to Small Business Issuer Rules

CHART 1: REGULATION S–B ITEM 501

Current	Final
• Small business issuer name	• Same.
• Title, amount, and description of securities offered	• Same.
• Selling security holders offering	• Same.
• Cross-reference to risk factors	• Same, except cross-reference must include page number. No print type specified.
• Formatted distribution table showing price, underwriting commission, and proceeds of offering.	• Delete distribution table. Use bullet list or other design that highlights the information.
• Show bona fide estimate of range of maximum offering price and number of shares.	• Same.
• Formatted best efforts disclosure and distribution table	• Delete distribution table. Use bullet list or other design that highlights the information.
• Prospectus ''Subject to Completion'' legend	• Retain in plain English.
• Commission legend	• Retain in plain English. Include reference to state securities commissions. No print type specified.
• State-required legends	• Same.
• Underwriters' over-allotment option, expenses of offering, commissions paid by others, and other non-cash consideration and finders fees.	• Identify existence of the option and the number of shares. Move all other information to the plan of distribution section.
• Date of prospectus	• Same.
• Expenses of offering	• Move to plan of distribution section.

CHART 1: REGULATION S–B ITEM 501—Continued

Current	Final
• No requirement to identify market for securities	• Identify market for securities, trading symbol, underwriters, and type of underwriting.
• No page limit	• Must limit cover to one page.

CHART 2: REGULATION S–B ITEM 502

Current	Final
• Availability of Exchange Act Reports	• Move to description of business section or, for short-form registration statements, include with incorporation by reference disclosure.
• Identify market for securities	• Move to cover page.
• Availability of reports with audited financial statements	• Move to description of business section.
• Availability of reports incorporated by reference.	• Move to incorporation by reference disclosure.
• Stabilization legend	• Move to plan of distribution section.
• Passive market making activities legend	• Delete. Disclosure retained in plan of distribution section.
• Dealer prospectus delivery obligation	• Retain on outside back page of prospectus.
• Canadian issuers' disclosure on enforceability of civil liability against foreign person.	• Move to description of business section.
• Table of contents	• Same. If prospectus delivered electronically, must immediately follow cover page.
• Summary	• Retain in plain English.
• Address and telephone number	• Retain. Permit on cover page or in summary.
• Risk factors	• Retain in plain English.

Appendix B—List of Plain English Pilot Participants

Company name	File No.	Type of file	Date filed
AMBAC Inc	1–10777	Annual Proxy/Schedule 14A	4/1/97.
American Family Holdings, Inc	333–37161	Consent Solicitation/Form S–4	11/5/97.
AmerUs Life Holdings, Inc	333–40065	Merger Proxy/Form S–4	11/12/97.
ANTEC Corporation	333–19129	Merger Proxy/Form S–4	12/31/96.
Associated Banc-Corp	333–18181	Merger Proxy/Form S–4	1/22/97.
Baltimore Gas and Electric Company	333–22697	Selling Shareholder Prospectus/Form S–3	3/4/97.
Baltimore Gas and Electric Company	333–19263	Medium Term Note Prospectus/Form S–3	1/3/97.
Baltimore Gas and Electric Company	1–1910	Management's Discussion and Analysis in the Form 10–K for the year ended 12/31/96.	3/28/97.
Bell Atlantic Corporation	333–11573	Merger Proxy/Form S–4	9/9/96.
BellSouth Corporation	333–25703	Merger Proxy/Form S–4	4/23/97.
The B.F. Goodrich Company	333–40291	Merger Proxy/Form S–4	11/14/97.
Boddie-Noell Properties, Inc	333–39803	Common Stock Offering/Form S–2	12/2/97.
British Telecommunications PLC (MCI Communications Corporation).	333–6422	Merger Proxy/Form F–4	Foreign issuer not filed electronically. Provided in hard copy.
The Brooklyn Union Gas Company	333–30353	Merger Proxy/Form S–4	6/30/97.
Buckeye Partners, L.P	1–09356	Consent Solicitation/Schedule 14A	6/26/97.
Caterpillar Inc	1–768	Annual Proxy/Schedule 14A	2/25/97.
The Chase Manhattan Corporation	1–5805	Annual Proxy/Schedule 14A	3/28/97.
ChoicePoint Inc	1–13069	Form 10	6/9/97.
Citizens Bancorp	333–29031	Savings & Loan Conversion/Form S–1	7/31/97.
Compaq Computer Corporation	333–32401	Merger Proxy/Form S–4	7/30/97.
CVS Corporation	333–24163	Merger Proxy/Form S–4	4/17/97.
Dean Witter, Discover & Co. (Morgan Stanley Group Inc.).	333–25003	Merger Proxy/Form S–4	4/11/97.
Delaware First Financial Corporation	333–36757	Savings & Loan Conversion/Form SB–2	11/7/97.
Detroit Diesel Corporation	1–12394	Annual Proxy/Schedule 14A	3/27/97.
Dollar Thrifty Automotive Group, Inc	333–39661	Common Stock Offering IPO/Form S–1	12/16/97.
Dominion Resources, Inc	333–35501	Universal Shelf/Form S–3	9/15/97.
Eastman Kodak Company	333–31759	Direct Purchase Plan/Form S–3	7/22/97.
Emerson Electric Co	333–40871	Merger Proxy/Form S–4	11/24/97.
Farmland Industries, Inc	333–40759	Subordinated Debenture Bonds/Form S–1	12/9/97.
FDX Corporation	333–39483	Merger Proxy/Form S–4	12/4/97.
FFP Marketing Company, Inc	333–41709	Merger Proxy/Form S–4	12/10/97.
The FINOVA Group Inc	1–11011	Annual Proxy/Schedule 14A	4/2/97.
Ford Motor Company	1–3950	Annual Proxy/Schedule 14A	4/7/97.
General Electric Company	333–30845	Merger Proxy/Form S–4	7/8/97.
General Mills, Inc	333–20429	Merger Proxy/Form S–4	1/24/97.
General Motors Corporation	333–37215	Spin-off Proxy/Form S–4	11/10/97.
Great Pee Dee Bancorp, Inc	333–36489	Savings & Loan Conversion/Form SB–2	10/23/97.
Hercules Incorporated	1–496	Annual Proxy/Schedule 14A	3/14/97
Honeywell Inc	0–20629	Annual Proxy/Schedule 14A	3/4/97.

Company name	File No.	Type of file	Date filed
International Business Machines Corporation	333–27669	Selling Shareholder Prospectus/Form S–3 ..	5/29/97.
ITT Corporation	333–7221	Universal Shelf/Form S–3	6/28/96.
Keebler Foods Company	333–42075	Common Stock Offering IPO/Form S–1	1/7/98.
MBNA Master Credit Card Trust II	(1)	Asset-Backed Securities Offering	Provided in hard copy.
Medical Science Systems, Inc	333–37441	Common Stock Offering/Form SB–2	11/21/97.
Mellon Bank Corporation	333–38213	Direct Stock Purchase Plan/Form S–3	10/17/97.
Monsanto Company	1–2516	Spin-off Proxy Solicitation/Schedule 14A	7/14/97.
North Arkansas Bancshares, Inc	333–35985	Savings & Loan Conversion/Form SB–2	10/30/97.
Ohio Edison Company	333–1489	Merger Proxy/Form S–4	4/12/96.
Parent Holding Corp. (Doubletree Corporation).	333–40233	Merger Proxy/Form S–4	11/14/97.
Perkins Family Restaurants, L.P	1–09214	Merger Proxy Solicitation/Schedule 14A	11/28/97.
Pfizer Inc	1–3619	Notes to Financial Statements/Form 10–Q for the periods 3/30/97, 6/29/97 and 9/28/97.	5/13/97, 8/13/97 and 11/12/97.
Pfizer Inc	33–56435	Dividend Reinvestment Plan/Form 424B3	11/17/97.
Premium Cigars International, Ltd	333–29985	Common Stock Offering IPO/Form SB–2	8/18/97.
Price Communications Corporation	333–34017	Merger Proxy/Form S–4	9/4/97.
Providian Bancorp, Inc	1–12897	Form 10	4/17/97.
RSL Communications, Ltd	333–34281	Exxon Capital Exchange Debt Offering/Form S–1.	9/29/97.
Rymer Foods Inc	333–27895	Prepackaged Bankruptcy Proxy/Form S–4 ..	5/28/97.
Santa Anita Realty Enterprises, Inc	333–34831	Merger 1 Proxy/Form S–4	9/26/97.
Sara Lee Corporation	1–3344	Annual Proxy/Schedule 14A	9/22/97.
SCANA Corporation	333–18149	Direct Purchase Plan/Form S–3	1/10/97.
SFB Bancorp, Inc	333–23505	Saving & Loan Conversion/Form SB–2	4/9/97.
SFBS Holding Company	333–40955	Savings & Loan Conversion/Form SB–2	12/23/97.
SIS Bancorp, Inc	333–38889	Merger Proxy/Form S–4	10/28/97.
Sullivan & Cromwell	(2)	Description of American Depository Receipts.	Provided in hard copy.
Tejas Gas Corporation	1–11580	Cash Merger Proxy Solicitation/Schedule 14A.	11/21/97.
Traveler Group Inc	333–38647	Merger Proxy/Form S–4	10/24/97.
Tyco International Ltd	333–31631	Merger Proxy/Form S–4	7/29/97.
Union Community Bancorp	333–35799	Savings & Loan Conversion/Form S–1	11/10/97.
Unisource Worldwide, Inc	1–14482	Form 10	11/26/97.
United Tennessee Bankshares, Inc	333–36465	Savings & Loan Conversion/Form SB–2	11/12/97.
UP Sedona, Inc	333–22643	Condo Offering Prospectus/Form S–11	8/11/97.
Valero Refining and Marketing Company	333–27013	Spin-off and Merger Proxy/Form S–1	5/13/97.
Wal-Mart Stores, Inc	1–6991	Annual Proxy/Schedule 14–A	4/18/97.
The Warnaco Group, Inc	333–40207	Merger Proxy/Form S–4	11/14/97.
WICOR, Inc	333–27415	Direct Stock Purchase Plan/Form S–3	5/19/97.
WSB Holding Company	333–29389	Savings & Loan Conversion/Form SB–2	7/15/97.

[1] Not filed yet.
[2] Not on file.

[FR Doc. 98–2889 Filed 2–5–98; 8:45 am]
BILLING CODE 8010–01–P

federal register

Friday
February 6, 1998

Part V

Environmental Protection Agency

40 CFR Part 444

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 444

[FRL–5931–6]

RIN 2040–AD03

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal represents the Agency's first effort to develop Clean Water Act (CWA) national effluent limitations guidelines and standards for wastewater discharges from commercially-operating hazardous waste combustor facilities regulated as ''incinerators'' or ''boilers and industrial furnaces'' under the Resource Conservation and Recovery Act (RCRA) as well as commercially-operating non-hazardous industrial waste combustor facilities. The proposal would not apply to sewage sludge incinerators, medical waste incinerators, municipal waste combustors or other solid waste combustion units. Sources of wastewater that would be regulated under the proposal include flue gas quench, slag quench, and air pollution control wastewater.

This proposal would limit the discharge of pollutants into navigable waters of the United States and the introduction of pollutants into publicly-owned treatment works (POTWs) by existing and new stand-alone industrial waste combustors that incinerate waste received from offsite. The proposal would not apply to wastewater discharges from industrial waste combustors that only burn wastes generated on-site at an industrial facility or generated at facilities under common corporate ownership.

Compliance with this proposed regulation is estimated to reduce the discharge of pollutants by at least 230,000 pounds per year and to cost an estimated $2.16 million annualized (post-tax $1996).

DATES: Comments on the proposal must be received by May 7, 1998.

In addition, EPA will conduct a workshop and public hearing on the pretreatment standards of the rule on February 26, 1998 from 10:00 am to 1:00 pm.

ADDRESSES: Send written comments and supporting data on this proposal to: Ms. Samantha Hopkins, US EPA, (4303), 401 M Street SW, Washington, DC 20460. Please submit an original and two copies of your comments and enclosures (including references). See Section IX of **SUPPLEMENTARY INFORMATION** for further instructions.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in WordPerfect format or ASCII file format.

Comments may also be filed electronically to ''hopkins.samantha@epamail.epa.gov''. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–08 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

The public record is available for review in the EPA Water Docket, 401 M Street SW, Washington, D.C. 20460. The record for this rulemaking has been established under docket number W–97–08, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9:00 am to 4:00 pm, Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

The workshop and public hearing covering the rulemaking will be held at the EPA headquarters auditorium, Waterfront Mall, 401 M St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

FOR FURTHER INFORMATION CONTACT:

For additional technical information contact Ms. Samantha Hopkins at (202) 260–7149. For additional economic information contact Mr. William Anderson at (202) 260–5131.

SUPPLEMENTARY INFORMATION:

Regulated Entities: Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Incinerators regulated under RCRA (i.e. rotary kiln incinerators, liquid injection incinerators) that operate commercially
	Boilers and industrial furnaces (BIFs) regulated under RCRA (i.e. cement kilns, boilers, industrial furnaces) that operate commercially
	Industrial waste combustors that burn non-hazardous industrial waste and operate commercially.
Federal Govt.	Federal Agencies which burn industrial hazardous or non-hazardous waste and operate commercially (none identified).[1]

[1] No Federal Agencies which operate commercially were identified in the information collection activities for this regulation. However, Federal Agencies operating commercially would be covered by the proposed regulation.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 444.02 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the proceeding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

The regulations proposed today are supported by several major documents:

1. ''Development Document for Proposed Effluent Limitations Guidelines and Standards for Industrial Waster Combustors'' (EPA 821–B–97–011). Hereafter referred to as the Technical Development Document, presents EPA's technical conclusions concerning the proposal. EPA describes, among other things, the data collection activities in support of the proposal, the wastewater treatment technology options, wastewater characterization, and the estimation of costs to the industry.

2. ''Economic Analysis and Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors'' (EPA 821–B–97–010).

3. ''Statistical Support Document of Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors'' (EPA 821–B–97–008).

4. ''Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors'' (EPA 821–B–97–009).

How To Obtain Supporting Documents

The Technical and Economic Development Documents can be obtained through EPA's Home Page of the Internet, located at www.EPA.gov/OST/rules. The document are also available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW., Washington, D.C., 20460; telephone (202) 260–7786 for the voice mail publication request.

Organization of This Document

Legal Authority: These regulations are being proposed under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

I. Legal Authority for the Proposed Regulation

A. Clean Water Act

1. Overview of Clean Water Act

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act attacks the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Direct dischargers must comply with effluent limitations and new source performance standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology. Permits authorizing discharges issued under the National Pollutant Discharge Elimination System must require compliance with these limitations and standards (CWA Sections 301(b), 304(b), 306, 307(b)–(d), 33 U.S.C. 1311(b), 1314(b), 1316, and 1317(b)–(d)). In the absence of national effluent limitations and new source performance standards, EPA must establish ''best professional judgement'' limitations and standards on a case-by-case basis before it may issue an NPDES discharge permit.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards (for new and existing sources) which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307 (b) and (c), 33 U.S.C. § 1317 (b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

2. Statutory Requirements of Regulation

As noted above, the CWA requires EPA to establish effluent limitations guidelines, pretreatment standards for new and existing sources performance standards. These guidelines and standards are summarized below:

a. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

In the guidelines for a given industry category, EPA defines what are the BPT effluent limitations for conventional, priority, and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first

considers the cost of achieving effluent reductions in relation to the effluent reductions obtained. The Agency next considers: the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA established BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where, however, existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practicably applied.

b. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources beyond the effluent reductions achieved under BPT. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 303(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

c. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

d. New Source Performance Standands (NSPS)—Sec. 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated treatment technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impact and energy requirements.

e. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass-through, interfere-with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW), including interfering with sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standard, are found at 40 CFR Part 403. Those regulations require POTWs to establish pretreatment standards to address local pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

f. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass-through, interfere-with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency consider the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. CWA Section 304(m) Requirements

Section 304(m) of the Act (33 U.S. 1314(m)), added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitation guidelines and standards (''effluent guidelines''), and (2) promulgating new effluent guidelines On January 2, 1990, EPA published and Effluent Guidelines Plan (55 FR 80), that included schedules for developing new revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the ''Hazardous Waste Treatment, Phase II'' Category. EPA subsequently changed the category name ''Hazardous Waste Treatment, Phase II'' to ''Landfills and Incinerators.''

Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc. challenged the Effluent Guidelines Plan in a suit filed in U.S. District Court for the District of Columbia *(NRDC et al.* v. *Reilly*. Civ. No. 89–2980). The district court entered a Consent Decree in this litigation on January 31, 1992. The Decree required, among other things, that EPA propose effluent guidelines for the ''Landfills and Incinerators'' category by December 1995 and take final action on these effluent guidelines by December 1997. On February 4, 1997, the court approved modifications to the Decree which revise the deadlines to November 1997 for proposal and November 1999 for final action. EPA provide notice of these modifications on February 26, 1997 at 62 FR 8726. Also, although ''Landfills and Incinerators'' is listed as a single entry in the Consent Decree schedule, EPA is publishing two separate rulemaking actions in the **Federal Register.**

II. Overview of the Industrial Waste Combustor Industry

Today's proposal represents the Agency's first attempt to develop national guidelines that would establish effluent limitations and pretreatment standards for new and existing discharges from a defined segment of facilities combusting wastes. EPA estimates that the regulation being proposed today would reduce the discharge of total suspended solids and metals from these facilities by at least 230,000 pounds per year. EPA performed an analysis of the water quality benefits that would be derived from this proposal and predicts the proposal would eliminate current excursions of aquatic life and/or human health toxic levels for three streams. EPA's model also projects that adoption of the proposal would result in reduction of sewage sludge contamination associated with discharges from Industrial Waste Combustor facilities at two of the three POTWs.

This summary section highlights the technology bases and other key aspects of the proposed rule. The technology descriptions in this section are presented in abbreviated form. More detailed descriptions are included in the Technical Development Document and Section VI.F. of this notice. Today's proposal presents the Agency's recommended regulatory approach as well as other options considered by EPA. The Agency's recommended approach as well as other options considered by EPA. The Agency's recommended approach for establishing discharge limitations is based on a detailed evaluation of the available data. As indicated below in the discussion of the specifics of the proposal, the Agency welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. Also, the Agency plans additional discussion with interested parties during the comment period to ensure that the Agency has the views of all parties and the best possible data upon which to base a decision for the final regulation. EPA's final regulation may be based upon any technologies, rationale or approaches that are described in this proposal and public comments, including any options considered but not selected for today's proposed regulation.

A. Summary of the Industrial Waste Combustor Industry

The universe of combustion facilities currently in operation in the United States is broad. These include municipal waste incinerators that burn household and other municipal trash and incinerators that burn hazardous wastes. Other types of incinerators include those that burn medical wastes exclusively and sewage sludge incinerators for incineration of POTWs' wastewater treatment residual sludge. In addition, some boilers and industrial furnaces (e.g., cement kilns) may burn waste materials for fuel.

While many industries began incinerating some of their wastes as early as the late 1950's, the current market for waste combustion (particularly combustion of hazardous wastes) is essentially a creature of the Resource Conservation and Recovery Act (RCRA) and EPA's resulting regulation of hazardous waste disposal. Among the major regulatory spurs to combustion of hazardous wastes have been the land-ban restrictions under the Hazardous and Solid Waste Amendments (HSWA) of 1984 and clean-up agreements for Superfund sites called ''Records of Decision'' (RODs).

Prior to the promulgation of EPA's Land Disposal Restrictions (LDRs) (40 CFR Part 268), hazardous waste generators were free to send untreated wastes directly to landfills. The LDRs mandated alternative treatment standards for wastes, known as Best Demonstrated Available Technologies (BDATs). Quite often, combustion was the stipulated BDAT. Future modifications to the LDRs may either increase or decrease the quantity of wastes directed to the combustion sector.

The LDRs have also influenced hazardous waste management under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.). The RODs set out the clean-up plan for contaminated sites under CERCLA. A key attribute to the RODs is the choice of remediation technology. Incineration is often a technology selected for remediation. While remediation efforts contribute a minority of the wastes managed by combustion, combustion has been used frequently on remediation projects. In addition, future congressional changes to CERCLA may affect remediation disposal volumes directed to the combustion sector.

The Agency proposed a draft Waste Minimization and Combustion Strategy in 1993 and 1994 to promote better combustion of hazardous waste and encourage reduced generation of wastes. The key projects under the broad umbrella of the strategy are: ''Revised Standards for Hazardous Waste Combustors'' 61 FR 17358, April 1996, the Waste Minimization National Plan completed in May 1995, and the ''RCRA Expanded Public Participation Rule'' 60 FR 63417, December 1995. Waste minimization will directly affect waste volumes sent to the combustion and all other waste management sectors.

In recent years, a number of contrary forces have contributed to a reduction in the volume of wastes being incinerated. Declines in waste volumes and disposal prices have been attributed to: waste minimization by waste generators, intense price competition driven by overcapacity, and changes in the competitive balance between cement kilns (and other commercial Boilers and Industrial Furnaces (BIFs)) and commercial incinerators. These trends have been offset by factors such as increased overall waste generation as part of general economic improvement, Industrial Waste Combustors consolidation, and reductions in onsite combustion. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities.

The segment of the universe of combustion units for which EPA is today proposing regulations includes all units which operate commercially and which use controlled flame combustion in the treatment or recovery of industrial waste. For example, industrial boilers, industrial furnaces, rotary kiln incinerators and liquid-injection incinerators are all types of units included in the Industrial Waste Combustor Industry.

Combustion or recovery operations at these facilities generate the following types of wastewater described more fully in Section VI.B.1.: air pollution control wastewater, flue gas quench wastewater, slag quench, truck/equipment wash water, container wash water, laboratory drain wastewater, and floor washings from process area. Typical non-wastewater by-products of combustion or recovery operations may include: slag or ash developed in the combustion unit itself, and emission particles collected using air pollution control systems. There are many different types of air pollution control systems in use by combustion units. The types employed by combustion units include, but are not limited to: packed towers (which use a caustic scrubbing solution for the removal of acid gases), baghouses (which remove particles and do not use any water), wet electrostatic precipitators (which remove particles using water but do not generate a wastewater stream), and venturi scrubbers (which remove particles using water and generate a wastewater stream). Thus, the amount of wastewater and types of wastewater generated by a combustion unit are directly dependent upon the types of air pollution control systems employed by the combustion unit.

B. Related Regulations

1. Hazardous Waste Combustion Regulation Proposed in 1996

Under the joint authority of the Clean Air Act (CAA) and the Resource Conservation Recovery Act (RCRA): EPA proposed the Revised Technical Standards for Hazardous Waste Combustion (HWC) Facilities (61 FR 17358, April 19, 1996). The proposed regulations would apply to the following types of combustors:

- RCRA Incinerators (as defined in 40 CFR 260.10)
- RCRA Cement Kilns and RCRA Lightweight Aggregate Kilns (as defined in 40 CFR 260.10)

The proposal would not apply to:

• RCRA Boilers and Industrial Furnaces (other than Cement Kilns and Aggregate Kilns, as defined in 40 CFR 260.10)

The proposed HWC regulation would establish stack emission limits for several hazardous air pollutants (HAPs). Under the Clean Air Act (CAA), these limits must require the maximum achievable degree of emission reductions of HAPs, taking into account the cost of achieving such reductions and non-air quality health and environmental impacts and energy requirements—so-called Maximum Achievable Control Technologies (MACT) standards. The HWC regulation would not set limits on the water effluents from the air pollution control systems (APCS) (like wet scrubbers, quench systems). The Agency identified revised emission limits based on updated data, which was published at 62 FR 24212, May 2, 1997. The Agency's current schedule calls for promulgation of this regulation in the third quarter of 1998. If the final regulation were promulgated as proposed, it is likely that some facilities using dry air pollution control, not presently generating Industrial Waste Combustor wastewater, may switch to using wet APCS. It is not anticipated that the universe of facilities that may be potentially subject to today's proposal will increase as a result of the promulgation of the HWC regulations.

2. Industrial Combustion Coordinated Rulemaking (ICCR)

EPA plans an Industrial Combustion Coordinated Rulemaking (ICCR) to develop recommendations for Federal air emission regulations that address various combustion source categories and pollutants. Regulations will be developed under sections 112 and 129 of the Clean Air Act, as well as section 111. The overall goal of the Industrial Combustion Coordinated Rulemaking is to develop recommendations for a unified set of Federal air regulations that will maximize environmental and public health compliance, within constraints of the Clean Air Act. The ICCR is expected to be proposed in October 1999 and promulgated in November 2000.

Under the CAA, the ICCR will potentially regulate air emissions from several categories of industrial combustion sources, including boilers, process heaters, waste incinerators, combustion turbines, and internal combustion engines. The ICCR will not cover combustion sources which burn hazardous waste. The combustion devices that will be covered by the ICCR are used pervasively for energy generation and waste disposal in a wide variety of industries and commercial and institutional establishments. They burn non-hazardous fuels including oil, coal, natural gas, wood, and other non-hazardous wastes. The industrial combustion regulations will affect thousands of sources nationwide. Only a small number of the facilities covered under the ICCR are also Industrial Waste Combustor facilities and thus potentially subject to today's proposal. Specifically, only ICCR facilities which operate commercially are potentially subject to today's proposal.

Because this regulation is not scheduled to go final until November 2000, EPA does not know what the final emission standards will be or on what technology they will be based. Consequently, EPA may need to reconsider its effluent limitations guidelines following promulgation of final ICCR rules.

C. Summary of Public Participation

During the data gathering activities that preceded development of the proposed rules, EPA met with or spoke to the following representatives from the industry: the Environmental Technology Council (formerly the Hazardous Waste Treatment Council), the National Solid Waste Management Association, and the Council of Industrial Boiler Owners.

EPA will assess all comments and data received at the public meeting prior to promulgation.

III. Summary and Scope of Proposed Regulation

EPA is proposing to establish discharge limitations and standards for wastewater discharges from those facilities which the proposed rule defines as an ''Industrial Waste Combuster facility.'' Industrial Waste Combustor facilities include commercial hazardous waste incinerators, boilers and industrial furnaces that burn waste for fuel and other commercial combustors burning industrial wastes. EPA is not including within the scope of the proposal industrial waste combustors that burn only wastes received from off-site facilities within the same corporate ownership (intracompany wastes) or industrial waste combustors that only burn wastes generated on-site. This summary section highlights the technology bases and other key aspects of the proposed rule. The technology descriptions in this section are presented in abbreviated form; more detailed descriptions are found in the Technical Development Document and Section VI.F. of today's notice.

The following summarizes today's proposal:

General Provisions

A. Scope of This Regulation

In today's notice, EPA is proposing effluent limitations guidelines and pretreatment standards for new and existing commercial facilities that are engaged in the combustion of industrial waste received from off-site facilities not under the same corporate ownership as the industrial waste combustor. The proposal would not apply to wastewater generated in burning wastes from intracompany transfers exclusively and/or from industrial processes on-site exclusively.

The proposed regulation today applies to the discharge of wastewater associated with the operation of the following:

• RCRA Incinerators (as defined in 40 CFR 260.10 and in the Definitions Section of this notice),

• RCRA Boiler and Industrial Furnaces (BIFs) (as defined in 40 CFR 260.10 and in the Definitions Section of this notice), and

• Non-hazardous commercial combustors.

As noted above, the proposal would not apply to wastewater discharges associated with combustion units that burn only wastes generated on-site. Furthermore, wastewater discharges from RCRA hazardous incinerators, RCRA BIFs, and non-hazardous combustors that burn waste generated off-site from facilities that are under the same corporate ownership (or effective control) as the combustor are similarly not included within the scope of this proposal. Facilities subject to the guidelines and standards would include commercial facilities whose operation is the combustion of off-site generated industrial waste as well as industrial or manufacturing combustors that burn waste received from off-site from facilities that are not within the same corporate structure. A further discussion of the types of combustion units to be covered under this regulation is included in the Technical Development Document and Section IV.A. of this notice.

As noted, facilities which only burn waste from off-site facilities under the same corporate structure (intracompany facility) and/or only burn waste generated on-site (captive facility) are not included in this proposal to be regulated under these guidelines. EPA has decided not to include these facilities within the scope of this regulation for the following reasons. First, based on its survey, EPA

identified (as of 1992) approximately 185 captive facilities and approximately 89 facilities that burn wastes received from other facilities within the same corporate umbrella.[1] A significant number of these facilities generated no Industrial Waste Combustor wastewater. EPA's data show that 73 captive facilities (39 percent) and 36 intracompany facilities (42 percent) generated no Industrial Waste Combustor wastewater. Second, EPA believes the wastewater generated by Industrial Waste Combustor operations at most of the captive and intracompany facilities that EPA has identified are already subject to national effluent limitations (or pretreatment standards) based on the manufacturing operations at the facility. Specifically, 140 of the 156 captive and intracompany facilities which received a screener survey and generated Industrial Waste Combustor wastewater as a result of their combustion operations: (1) Were either previously identified as subject to another effluent guidelines by EPA or (2) identified themselves as subject to another effluent guidelines. There are 97 facilities subject to the Organic Chemicals, Plastics and Synthetic Fibers category (40 CFR Part 414), 17 subject to the Pharmaceuticals category (40 CFR Part 439), 16 subject to the Steam Electric Power Generating category (40 CFR Part 423), 3 to the Pesticide Manufacturing category (40 CFR Part 455), and 7 to other categories. EPA could not identify an effluent guidelines category applicable to their discharges for 16 of these 156 facilities (five of these are federal facilities).

Also, 83 percent of all captive facilities and 73 percent of all intracompany facilities reported that the combustion unit wastewaters made up less than 20 percent of the final wastewater stream discharged from each facility. EPA concluded that, in these circumstances, it is likely that the Industrial Waste Combustor waste streams are being treated along with other categorical waste. Also, 71 percent of all captive facilities and 67 percent of all intracompany facilities reported that their IWC wastewater is covered as process wastewater under existing EPA effluent limitations (40 CFR Parts 405–471). This indicates that most Industrial Waste Combustor waste streams are subject either directly (where discharged separately) or when mixed with other wastes subject to national effluent guidelines (or pretreatment standards) comparable to those being considered here. Given these facts, EPA has concluded preliminarily that it should not include such captive or intracompany facilities within the scope of today's proposed action. However, EPA is requesting comment on its approach. The Agency is particularly eager for data concerning treatment of such waste streams at categorical and other facilities. The proposed effluent limitations guidelines and standards are intended to cover wastewater discharges resulting from combustion of, or recovery of components from, hazardous and non-hazardous industrial waste received from off-site facilities.

The Agency also solicits comment on including a *de minimis* quantity or percentage of off-site receipts in comparison to the total amount of waste burned at the facility for which facilities would not be considered in the scope of this regulation. Some manufacturing facilities may receive a few shipments of waste or off-specification products to be burned on site, but these facilities do not actively accept large quantities of waste from off-site for the purpose of combustion and disposal. In the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, some Industrial Waste Combustor facilities were identified with intermittent shipments of waste. EPA is requesting information on the amounts of waste received and the reasons the waste were accepted to determine if a *de minimis* quantity should be established to limit the applicability of this rulemaking. At present, no *de minimis* quantity exemption has been established for this rulemaking. Facilities are included in the scope of this regulation regardless of the quantity received for treatment if they accept any waste for treatment from off-site.

B. Monitoring Requirements for Industrial Waste Combustors

EPA's regulations require that both direct and indirect discharges must monitor to establish compliance with their limitations and standards. Thus, EPA's NPDES permit regulations require that all the permits of all direct dischargers must include requirements to monitor according to EPA-approved test procedures each pollutant limited in the permit, the volume of effluent discharged from each outfall, other appropriate measurements such as pollutants such to notification requirements. *See* 40 CFR 122.44(i). EPA's pretreatment regulations similarly require indirect discharge to monitor to demonstrate compliance with pretreatment standards. See 40 CFR 403.12(g).

Limitations and Standards for Existing Industrial Waste Combustor Facilities

C. Proposed Effluent Limitations for Existing Industrial Waste Combustor Facilities That Discharge Wastewater to Navigable Waters

i. Best Practicable Control Technology Currently Available (BPT)

The Agency is proposing to establish BPT effluent limitations guidelines for the Industrial Waste Combustors to control conventional, priority, and non-conventional pollutants in the waste treatment effluent. Table III.C–1 is a summary of the technology basis for the proposed effluent limitations.

TABLE III.C–1.—TECHNOLOGY BASIS FOR BPT EFFLUENT LIMITATIONS

Proposed subpart	Technology basis
444	Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, Solid-Liquid Separation, and Sand Filtration.

The BPT limitations would be based upon two stages of chemical precipitation, each at different pH levels, each followed by some form of separation and sludge dewatering. The first stage of chemical precipitation is preceded by chromium reduction, when necessary. The different pH levels would be selected so as to optimize the removal of metals from the Industrial Waste Comubustor wastewater. The pollutants controlled and the points of application are described in Section VI of this notice.

ii. Best Conventional Pollutant Control Technology (BCT)

The EPA is proposing BCT effluent limitations guides for Total Suspended Solids (TSS) for the Industrial Waste Combustor Industry. The proposed BCT effluent limitations guidelines are equal to the proposed BPT limitations for TSS. The development of proposed BCT effluent limitations is further explained in Section VI of this notice.

iii. Best Available Technology Economically Achievable (BAT)

The Agency is proposing to set BAT effluent limitations guidelines for the Industrial Waste Combustor Industry. These proposed limitations are based on the same technologies proposed for BPT.

[1] As explained below, EPA conducted an extensive survey (with follow-up questionnaire), in part, to characterize the universe of facilities being considered for regulation. Following proposal, EPA plans to review its screener survey and questionnaire results in order to confirm the accuracy of its assignment of wastewater flows and facilities as captive, intra-company or commercial Industrial Waste Combustors.

D. Proposed Pretreatment Standards for Existing Industrial Waste Combustor Facilities That Discharge Wastewater into a POTW

Pretreatment Standards for Existing Sources (PSES)

For pollutants that pass-through or otherwise interfere with POTWs, EPA is proposing to set PSES similar to the proposed BPT/BAT effluent limitations for the Industrial Waste Combustors. Table III.D–1 is a summary of the technology basis for the proposed effluent limitations. PSES are further discussed in Section V of this notice.

TABLE III.D–1.—TECHNOLOGY BASIS FOR PSES EFFLUENT LIMITATIONS

Proposed subpart	Technology basis
444	Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation and Solid-Liquid Separation.

Limitations and Standards for New Industrial Waste Combustor Facilities

E. Proposed Effluent Limitations for New Industrial Waste Combustor Facilities That Will Discharge Wastewater to Navigable Waters

New Source Performance Standards (NSPS)

EPA is proposing to set NSPS equivalent to the proposed BPT/BCT/BAT effluent limitations for the Industrial Waste Combustor Industry. NSPS are discussed in more detail in Section VI of this notice.

F. Proposed Pretreatment Standards for New Industrial Waste Combustor Facilities That Will Discharge Wastewater into a POTW

Pretreatment Standards for New Sources (PSNS)

For pollutants that pass-through or otherwise interfere with POTWs, EPA is proposing to set PSNS equivalent to the proposed PSES effluent limitations. PSNS are further discussed in Section VI of this notice.

IV. Detailed Description of Industrial Waste Combustors

A. Identified Industrial Waste Combustor Facilities

Presented below is a brief summary description of the Industrial Waste Combustor Industry, for which EPA is today proposing guidelines.

Based upon responses to EPA's 1994 Waste Treatment Industry Phase II: Incinerators Screener Survey and Questionnaire (see discussion below), the Agency estimates that there are approximately 84 commercial Industrial Waste Combustor facilities of the type for which EPA is proposing limitations and standards. These include both stand-alone combustion facilities as well as facilities which treat their own process residuals along with wastes received from off-site. Of these 84 facilities, 58 facilities do not generate any type of Industrial Waste Combustor wastewater (as defined in Section VI.B. of this notice.) Also, 13 of these facilities generate Industrial Waste Combustor wastewater but do not discharge the wastewater to a receiving stream or to a POTW. These facilities are considered ''zero or alternative dischargers'' and use a variety of methods to dispose of their wastewater. At these facilities, (1) wastewater is sent off-site for treatment or disposal (four facilities); (2) wastewater is burned or evaporated on site (five facilities); (3) wastewater is sent to a surface impoundment on site (three facilities); and (4) wastewater is injected underground on site (one facility). Thus, EPA has identified only 13 facilities that were discharging Industrial Waste Combustor wastewater to a receiving stream or introducing wastewater to a POTW in 1992. Of these 13 facilities, 2 facilities have, since 1992, either stopped accepting waste from off site for combustion or have closed their combustion operations. Eight of the 11 open facilities introduce their Industrial Waste Combustor wastewater to a receiving stream and 3 of the 11 facilities discharge their Industrial Waste Combustor wastewater to a POTW. These 11 facilities are found near the industries generating the wastes undergoing combustion.

As previously noted, Industrial Waste Combustor facilities accept a variety of different wastes for treatment. Typically, a combustor operator will request that the waste generators initially furnish profile information on the waste stream to be burned. After the combustion facility reviews the profile information of the waste, it determines a charge for treating the waste stream. If the waste generator accepts the cost of treatment, shipments of the waste stream to the combustion facility will begin. For each truck load of waste received for combustion, the combustion facility collects a sample from the shipment and analyzes the sample to determine if it matches the profile information. Specifically, the waste shipment is analyzed to characterize the level of pollutants in the sample as well as the energy content of the sample. If the sample matches the profile information, the shipment of waste will be burned. If the sample does not match the profile information, the combustion facility will reevaluate the estimated cost of combustion for the shipment or decline the shipment for combustion.

The 11 open facilities identified by EPA operate a wide variety of combustion units. Four facilities operate rotary kilns and are hazardous waste incinerators regulated under RCRA. Three facilities operate liquid injection incinerators that are also incinerators regulated under RCRA. Three facilities operate furnaces that are regulated as BIFs under RCRA. One facility operates a liquid injection device that is also regulated as a BIF under RCRA. Finally, one facility operates a combustion device that is not subject to RCRA regulations as either a BIF or an incinerator.

The 11 open facilities identified by EPA use a wide variety of air pollution control systems. The types of air pollution control systems in use are: fabric filters, spray chamber scrubbers, packed tower scrubbers, ionizing wet scrubbers, venturi scrubbers, dry scrubbers, dry cyclones, and wet electrostatic precipitators. Ten of the 11 open facilities use more than one of the air pollution control systems listed above. Six of the eleven facilities use a combination of wet and dry air pollution control systems. Four of the eleven facilities use only wet air pollution control systems. The type of air pollution systems in use at two of the facilities is not known.

B. Wastewater Treatment Processes Used by Industrial Waste Combustors

As the Agency learned from data and information collected as a result of the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, the commercial Industrial Waste Combustors for whose wastewater discharges EPA is today proposing effluent guidelines accept many types of hazardous and non-hazardous industrial waste for treatment in liquid or solid form. In 1992, these 11 commercial facilities accepted approximately 314,000 tons of industrial waste for combustion, of which 86 percent was hazardous and 14 percent was non-hazardous.

The wastewater generated by the different types of facilities is very similar. The majority of the wastewater by the 11 open Industrial Waste Combustor facilities is generated from air pollution control systems designed to capture stack emissions. Air pollution

control wastewater consists of primarily or inorganic pollutants and has very low concentrations of organic compounds because these are largely destroyed during combustion. The post-combustion streams that passes through the air pollution control system contain low levels of organics and consequently little ends up in the wastewater.

Nine of the 11 open Industrial Waste Combustor facilities employ some type of chemical precipitation to treat these organic pollutants in their wastewater. These facilities then send the treatment sludge to a RCRA Subtitle C or D landfill depending upon its content. Two of the remaining eleven only neutralize their air pollution control system wastewater before discharge.

The remaining facility does not generate air pollution control system wastewater. It uses filtration and adsorption as its wastewater treatment technology to treat the following wastewaters: floor washings from the Industrial Waste Combustor process area, truck/equipment wash water and container wash water.

EPA sampled wastewater at three facilities for five days. Of the three facilities sampled by EPA, only one facility generated and treated wastewater exclusively from its air pollution control system. It also did not treat other wastewater such as floor washwater, truck/equipment washwater or container wash water with its air pollution control system wastewater. The other two facilities generated wastewater streams other than air pollution control wastewater, but treated these other wastewater streams separately from the air pollution control wastewater. Because these other streams contain both organic and inorganic pollutants, these two facilities treated these other wastewaters using biological treatment. These biological treatment systems were not sampled by EPA because the volume of these other wastewater streams (floor washings or truck/equipment/container wash water) represented only a small percentage of the wastewater being treated in these systems. Thus, EPA has no sampling data for any wastewaters other than air pollution control wastewater and flue gas quench. And thus, the proposed regulations are based on data from facilities employing treatment technologies designed to reduce metals loadings. The proposed limits do not include limits on discharges of organic pollutants and do not regulate discharges associated with the other types of wastewater streams EPA identified at these sites. Permit writers would need to establish site-specific Best Professional Judgment (BPJ) limits to regulate facilities which do not generate any wastewater from air pollution control systems but which are discharging wastewater associated with the treatment of other Industrial Waste Combustor wastewater streams. If EPA obtains data on treatment of these other wastewater streams it will consider developing limits for these wastestreams in this rule. To this end, EPA is requesting commenters to provide sampling data on such treatment of these ancillary streams. Further, the Agency is requesting comments on whether it should subcategorize the industry based on the types of wastewater sources found at an Industrial Waste Combustor facility. Commenters should also submit data on specific wastewater technologies that may be appropriate for treating these wastewaters.

V. Summary of EPA Activities and Data Gathering Efforts

A. EPA's Initial Efforts To Develop a Guideline for the Industrial Waste Combustor Industry

In 1986, the Agency initiated a study of waste treatment facilities which receive waste from off-site for treatment, recovery, or disposal. The Agency looked at various segments of the waste management industry including combustors, centralized waste treatment facilities, landfills, fuel blending operations, and waste solidification/stabilization processes (Preliminary Data Summary for the Hazardous Waste Treatment Industry, EPA 440–1–89–100, September 1989).

Developemnt of effluent limitations guidelines and standards for the Industrial Waste Combustor Industry began in 1993. EPA originally looked at RCRA hazardous waste incinerators, RCRA boilers and industrial furnaces (BIFs), and non-hazardous combustion units that treat industrial waste. Sewage sludge incinerators, municipal waste incinerators, and medical waste incinerators were not included in the 1989 study or in the initial data collection effort in 1993. EPA limited this phase of the rulemaking to the development of regulations for Industrial Waste Combustors.

B. Wastewater Sampling Program

In the sampling program for the 1989 Hazardous Waste Treatment Industry Study, twelve families were sampled to characterize the wastes received and evaluate the on-site treatment technology performance at combustors, landfills, and hazardous waste treatment facilities. All of the facilities sampled had more than one on-site operation (e.g., combustion and landfill leachate generation). The data collected cannot be used for this project because the facilities mix wastestreams for treatment. The collected data provides information on the performance of mixed wastewater treatment systems. Waste characteristics and treatment technology performance for the combustor facilities cannot be differentiated from the characteristics and performance associated with treatment of the mixed streams.

Between 1993 and 1995, EPA visited 14 Industrial Waste Combustor facilities. Eight of the fourteen Industrial Waste Combustors EPA visited were captive facilities because captive facilities were still being considered for inclusion in the scope of the Industrial Waste Combustor regulation at the time of the site visits. During each visit, EPA gathered information on waste receipts, waste and wastewater treatment, and disposal practices. EPA also took one grab-sample of untreated Industrial Waste Combustor scrubber blowdown water at twelve of the fourteen facilities. EPA analyzed most of these grab-samples for over 450 analytes to identify pollutants at these facilities. The grab-samples from the twelve site visits allowed EPA to assess whether there was a significant difference in raw wastewater characteristics from a wide variety of combustion unit types. (Section IV.A. of today's notice describes the types of combustion units used by Industrial Waste Combustors.) EPA determined that the raw wastewater characteristics were similar for all types of combustion units both in types of pollutants found and the concentrations of the pollutants found. Specifically, organics, pesticides/herbicides, and dioxins/furans were generally only found, if at all, in low concentrations in the grab-samples. (See Section VI.D. for a thorough discussion of dioxins/furans found at 7 of the 12 Industrial Waste Combustor facilities sampled.) However, a variety of metal analytes were found in treatable concentrations in the grab-samples.

Based on these data and the responses to the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, EPA selected three of the Industrial Waste Combustor facilities for the BPT/BAT sampling program to collect data to characterize discharges and the performance of selected treatment systems. Using data supplied by the facilities, EPA applied five criteria in initially selecting which facilities to sample. The criteria were based on whether the wastewater treatment system: (1) was effective in removing pollutants; (2) treated wastes received

from a variety of sources (solids as well as liquids), (3) employed either novel treatment technologies or applied traditional treatment technologies in a novel manner (4) applied waste management practicesthat increased the effectiveness of the treatment unit, and (5) discharged its treated wastewater under an NPDES permit. The other 11 facilities visited were not sampled because they did not meet these criteria. Eight of these 11 facilities visited did not operate commercially, and are thus no longer in the scope of the project.

During each sampling episode, wastewater treatment system influent and effluent streams were sampled. Samples also were taken an intermediate points to assess the performance of individual treatment units. This information is summarized in the Technical Development Document. In all sampling episodes, samples were analyzed for over 450 analytes to identify the pollutants at these facilities. Again, organic compounds, pesticides/herbicides, and dioxins/furans were generally only found in low concentrations in the composite daily samples, if they were found at all. Dioxin/furan analytes were not detected in the sampling episode used to establish BPT/BAT/PSES. However, dioxin/furan analytes were found in the two other sampling episodes (see discussion in Section VI.D. below.)

EPA completed the three sampling episodes for the Industrial Waste Combustor Industry from 1994 to 1995. Selection of facilities to be sampled was limited due to the small number of facilities in the scope of the project. Only nine of the operating facilities identified discharged their treated wastewater under an NPDES permit. Of these nine facilities, only five burned solid as well as liquid waste. Also, one of these five burned non-hazardous waste only. All of the facilities sampled used some form of precipitation for treatment of the metal-bearing waste streams. All of the facilities sampled were directed dischargers and were therefore designed to treat effectively the conventional pollutant found in this industry, TSS. Data from two of the facilities sampled could not be used to calculate the proposed limitations and standards in combination with the other facility because they did not employ the selected treatment technology. However, data from these facilities were used to characterize the raw waste streams. Thus, only one sampling episode contained data which were used to characterize the treatment technology performance of the Industrial Waste Combustors.

C. Waste Treatment Industry Phase II: Incinerators Screener Survey and Questionnaire

Under the authority of Section 308 of the Clean Water Act, EPA sent the Waste Treatment Industry Phase II: Incinerators 1992 Screener Survey (OMB Approval Number: 2040–0162, Expired: 08/31/96) in September 1993 to 606 facilities that the Agency had identified as possible Industrial Waste Combustor facilities. Since the Industrial Waste Combustor Industry was not represented by a SIC code at the time of the survey, identification of facilities was difficult. Directories of treatment facilities, Agency information, and telephone directories were used to identify the 606 facilities to which the questionnaires were mailed. The screener survey requested summary information on: (1) the types of wastes accepted for combustion; (2) the types of combustion units at a facility; (3) the quantity, treatment, and disposal of wastewater generated from combustion operations; (4) available analytical monitoring data on wastewater treatment; and (5) the degree of co-treatment (treatment of Industrial Waste Combustor wastewater with wastewater from other industrial operations at the facility). Information obtained by the Waste Treatment Industry Phase II: Incinerators 1992 screener survey is summarized in the Technical Development Document for today's proposed rule. The responses from 564 facilities indicated that 357 facilities burned industrial waste in 1992. The remaining 207 did not burn industrial waste in 1992. Of the 357 facilities that burned industrial waste, 142 did not generate any Industrial Waste Combustor wastewater as a result of their combustion operations. Of the remaining 215 facilities that generated Industrial Waste Combustor wastewater, 59 operated commercially, and 156 only burned wastes generated on-site, and/or only burned wastes generated from off-site facilities under the same corporate structure.

Following an analysis of the screener survey results, EPA sent the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire (OMB Approval Number: 2040–0167, Expired: 12/31/96) in March, 1994 to selected facilities which burned industrial waste and generated Industrial Waste Combustor wastewater. EPA sent the questionnaire to all 59 of the commercial facilities and all 16 of the non-commercial facilities that burned non-hazardous industrial waste. Further, EPA sent 32 of the remaining 140 non-commercial facilities a questionnaire. These thirty-two were selected based on a statistical random sample. The questionnaire specifically requested information on: (1) the type of wastes accepted for treatment; (2) the types of combustion units at a facility; (3) the types of air pollution control devices used to control emissions from the combustion units at a facility; (4) the quantity, treatment, and disposal of wastewater generated from combustion operations; (5) available analytical monitoring data on wastewater treatment; (6) the degree of co-treatment (treatment of Industrial Waste Combustor wastewater with wastewater from other industrial operations at the facility); and (7) the extent of wastewater recycling and/or reuse at the facility. Information was also obtained through follow-up telephone calls and written requests for clarification of questionnaire responses. Information obtained by the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire is summarized in the Technical Development Document for today's proposed rule.

D. Detailed Monitoring Questionnaire

EPA also requested a subset of Industrial Waste Combustor facilities that received a questionnaire to submit wastewater monitoring data in the form of individual data points rather than monthly or annual aggregates. Only facilities that had identified a sample point location where the stream was over 50 percent Industrial Waste Combustor wastewater received the Detailed Monitoring Questionnaire. These wastewater monitoring data included information on pollutant concentrations at various points in the wastewater treatment processes. Data were requested from 26 facilities. Sixteen of these facilities operated commercially and 10 operated non-commercially.

VI. Development of Effluent Limitations Guidelines and Standards

A. Industry Subcategorization

For today's proposal, EPA considered whether a single set of effluent limitations and standards should be established for this industry or whether different limitations and standards were appropriate for subcategories within the industry. In its preliminary decision that subcategorization is not required, EPA took into account all the information collected and developed with respect to the following factors: waste type received; type of combustion process; air pollution control used; nature of wastewater generated; facility size, age, and location; non-water

quality impact characteristics; and treatment technologies and costs. For most facilities in this industry, a wide variety of wastes are combusted. These facilities, however, employ the same wastewater treatment technologies regardless of the specific type of waste being combusted in a given day.

EPA concluded that a number of factors did not provide an appropriate basis for subcategorization. The Agency concluded that the age of a facility should not be a basis for subcategorization because many older facilities have unilaterally improved or modified their treatment process over time. Facility size is also not a useful technical basis for subcategorization for the Industrial Waste Combustor Industry because wastes can be burned to the same level regardless of the facility size and has no significant relation to the quality or character of the wastewaters generated or treatment performance. Likewise, facility location is not a good basis for subcategorization; no consistent differences in wastewater treatment performance or costs exist because of geographic location. Non-water quality characteristics (waste treatment residuals and air emission effects) did not constitute a basis for subcategorization. The environmental effects associated with disposal of waste treatment residual or the transport of potentially hazardous wastewater are a result of individual facility practices. The Agency did not identify any consistent basis for these decisions that would support subcategorization. Treatment costs to not appear to be a basis for subcategorization because costs will vary and are dependent on the following waste stream variables: flow rates, waste quality, waste energy content, and pollutant loadings. Therefore, treatment costs were not used as a factor in determining subcategories.

EPA identified three factors with significance for potentially subcategorizing the Industrial Waste Combustor Industry: the type of waste received for treatment, the type of air pollution control system used by a facility, and the types of Industrial Waste Combustor wastewater sources (e.g., container wash water vs. air pollution control water).

A review of untreated Industrial Waste Combustor air pollution control system wastewater showed that there is some difference in the concentration of pollutants between solid and liquid waste combustion units. In particular, for nine of the 27 metals analyzed at six Industrial Waste Combustor facilities, the average concentration of a particular metal was higher in the water from facilities that burned solids (as well as liquids) than in facilities that burned liquids only. EPA believes that this difference is probably the result of two factors: the type of air pollution control employed by the facilities and the amount of wastewater generated. Specifically, the data reviewed by EPA showed that two of the three facilities that burn liquid waste use dry scrubbing devices prior to using scrubbing devices which generate wastewater. One of these facilities uses a baghouse initially and the other uses a fabric filter. These dry scrubbers would remove some of the metals which would have ended up in the wastewater stream. In comparison, only one of the three facilities that burn solids uses a dry scrubbing device prior to using scrubber devices which generate wastewater. This facility uses an electrostatic precipitator initially. In addition, all three of the facilities that burn liquid waste do not recycle any of their wastewater for reuse in the scrubbing system following partial wastewater treatment. In comparison, two of the three facilities that burn solids recycle some of their partially treated wastewater for reuse in their scrubbing system. One of these facilities recycles 60 percent and the other recycles 82 percent. The reuse of partially treated wastewater would have the effect of reducing the wastewater discharge and increasing the concentration of metals in the recycled wastewater. Thus, it is difficult to assess whether there is in fact any significant difference in the concentrations of pollutants in wastewater from facilities burning solid versus liquid waste. This situation in general makes subcategorization on this basis difficult. Therefore, EPA has concluded that available data do not support subcategorizating either by the type of waste received for treatment or the type of air pollution control system used by a facility.

Based on analysis of the Industrial Waste Combustor Industry, EPA has determined that it should not subcategorize the Industrial Waste Combustors for purposes of determining appropriate limitations and standards. EPA invites comment on whether the Industrial Waste Combustors should be divided into subcategories, and if so, what should be the basis of the subcategorization. Commenters should submit data to support any suggested subcategorization.

B. Characterization of Wastewater

This section describes current water use and wastewater characterization at the 11 Industrial Waste Combustor facilities identified in the U.S. which currently discharge Industrial Waste Combustor wastewater to a receiving stream or to a POTW.

1. Water and Sources of Wastewater

Approximately 861 million gallons of wastewater are generated and discharged annually at the 11 Industrial Waste Combustor facilities. EPA has identified the sources described below as contributing to wastewater discharges at Industrial Waste Combustor operations. Only air pollution control wastewater, flue gas quench, and slag quench will be subject to the proposed effluent limitations and standards. Most of the wastewater generated by Industrial Waste Combustor operations result from these sources.

a. *Air Pollution Control System Wastewater.* Particulate matter in the effluent gas stream of an Industrial Waste Combustor is removed by four main physical mechanisms *(Handbook of Hazardous Waste Incineration*, Brunner 1989). One mechanism is interception, which is the collision between a water droplet and a particle. Another method is gravitational force, which causes a particle to fall out of the direction of the streamline. The third mechanism is impingement, which causes a water-particle to fall out of the streamline due to inertia. Finally, contraction and expansion of a gas stream allow particulate matter to be removed from the stream. Thus, removal of particulate matter can be accomplished with or without the use of water. Depending upon the type of waste being burned, Industrial Waste Combustors may produce acid gases in the air pollution control system. In order to collect these acid gases, caustic solution is generally used in a wet scrubbing system.

b. *Flue Gas Quench Wastewater.* Water is used to rapidly cool the gas emissions from combustion units. There are many types of air pollution control systems that are used to quench the gas emission from Industrial Waste Combustors. For example, in packed tower scrubbing systems, water enters from the top of the tower and gas enters from the bottom. Water droplets collect on the packing material and are rinsed off by the water stream entering the top of the tower (*Handbook of Hazardous Waste Incineration*, Brunner 1989). This rapidly cools the gas stream along with removing some particulate matter.

c. *Slag Quench Wastewater* Water is used to cool molten material generated in slagging-type combustors.

d. *Truck/Equipment Wash Wastewater.* Water is used to clean the inside of trucks and the equipment used for transporting wastes.

e. *Container Wash Wastewater.* Water is used to clean the insides of waste containers.

f. *Laboratory Drain Wastewater.* Water is used in on-site laboratories which characterize incoming waste streams and monitor on-site treatment performance.

g. *Floor Washings and Other Wastewater From Process Area.* This includes stormwater which comes in direct contact with the waste or waste handling and treatment areas. (Stormwater which does not come into contact with the wastes would not be subject to today's proposed limitations and standards. However, this stormwater is covered under the NPDES stormwater rule, 40 CFR 122.26.)

2. Wastewater Discharge

As mentioned above, approximately 861 million gallons of wastewater were discharged from the 11 of the 84 commercial industrial combustors identified by EPA based on questionnaire responses. Eight of the 11 facilities discharge wastewater directly into a receiving stream or body of water. The other three facilities discharge indirectly by introducing their wastewater into a publicly-owned treatment works (POTW). There are sixty-seven facilities that either do not generate any wastewater (43) or do not discharge their wastewater to a receiving stream or POTW (24) as explained above. In general, the primary types of wastewater discharges from discharging facilities are: air pollution control system wastewater, flue gas quench, laboratory-derived wastewater, and floor washings from process area. EPA is using the phrase ''Industrial Waste Combustor wastewater'' to refer to these wastewaters.

This regulation applies to direct and indirect discharges only.

3. Wastewater Characterization

The Agency's BPT/BAT/PSES sampling program for this industry detected 21 pollutants (conventional priority, and non-conventional) in waste steams at treatable levels. The quantity of these pollutants currently being discharged is difficult to assess. Limited monitoring data are available from facilities for the list of pollutants identified from the Agency's sampling program prior to commingling of these wastewaters with non-contaminated stormwater and other industrial wastewater before discharge. EPA also used wastewater permit information, monitoring data supplied in the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire and data supplied in the Detailed Monitoring Questionnaire to estimate current pollutant discharge levels. EPA used a ''non-process wastewater'' factor to quantify the amount of non-contaminated stormwater and other industrial process water in a facility's discharge Section 4 of the Technical Development Document (TDD) provides a more detailed description of ''non-process wastewater'' factors and their use. A facility's current discharge of treated Industrial Waste Combustor wastewater was calculated using the monitoring data supplied multiplied by the ''non-process wastewater'' factor. The Agency is soliciting comments on the approaches used to calculate the current performance as well as requesting any monitoring data available before the addition of non-contaminated stormwater or other industrial wastewater.

C. Pollutants Not Regulated

EPA is proposing effluent limitations and standards for only a few conventional, priority, and non-conventional pollutants in this proposed regulation. Among the reasons EPA may have decided not to propose effluent limitations for a pollutant are the following:

(a) The pollutant is deemed not present in Industrial Waste Combustor wastewater, because it was not detected in the influent during the Agency's sampling/data gathering efforts with the use of analytical methods promulgated pursuant to Section 304(h) of the Clean Water Act or with other state-of-the-art methods.

(b) The pollutant is present in the influent only in trace amounts and is neither causing nor likely to cause toxic effects.

(c) The pollutant was detected in the effluent from only one or a small number of samples and the pollutant's presence could not be confirmed.

(d) The pollutant was effectively controlled by the technologies used as a basis for limitations on other ''indicator'' pollutants, including those for which limitations are proposed today, and are therefore regulated by the limitations for the indicator pollutants or

(e) Insufficient data are available to establish effluent limitations.

D. Dioxins/Furans in Industrial Waste Combustor Industry

1. Background

Scientific research has identified 210 isomers of chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF). EPA attention has primarily focused on the 2,3,7,8-substituted congeners—a priority pollutant under the CWA—of which 2,3,7,8-TCDD and 2,3,7,8-TCDF are considered the most toxic. Evidence suggests that non-2,3,7,8-substituted congeners may not be as toxic. Some sources report that these non-2,3,7,8-substituted congeners may either be broken down or quickly eliminated by biological systems.

Dioxins and furans are formed as a by-product during many industrial and combustion activities, as well as during several other processes. The activities that may create dioxins under certain conditions may include:

—Combustion of chlorinated compounds, including PCBs;
—Some metals are suspected to serve as catalysts in the formation of dioxin/furans;
—Metal processing and smelting;
—Petroleum refining.
—Chlorinated organic compound manufacturing.

2. Dioxin/Furans in Industrial Waste Combustor Wastewater

EPA identified a number of dioxin/furan compounds as present in the *untreated* wastewater streams at seven of the twelve facilities sampled. Data from two closed facilities has been excluded. Thus, the following discussion relates to the data for the ten remaining facilities (a total of 32 aqueous samples).

It is important to note that EPA did not detect 2,3,7,8-TCDD or 2,3,7,8-PeCDD (the two most toxic congeners of all dioxin/furan compounds) in any of the raw wastewater samples collected. Furthermore, the dioxin/furans detected in untreated Industrial Waste Combustor wastewaters during EPA sampling at 10 sites shows that these dioxin/furans were all detected at levels significantly (orders of magnitude) below the ''Universal Treatment Standard'' (40 CFR 268.48) level established under the Resource Conservation and Recovery Act for dioxins/furans. EPA identified no dioxin/furans in the Industrial Waste Combustor wastewater effluent.

CDD/CDFs are lipophilic and hydrophobic. As such, they are most often associated, or have an affinity for, suspended particulates in wastewater matrices. The more highly chlorinated isomers (i.e. the hepta- and octa-congeners) are the least volatile and more likely to be removed through particulate adsorption or filtration. While recommended treatment technologies differ according to the wastewater characteristics, there is some evidence that dioxins generally will bind with suspended solids and some

sources have asserted that these compounds may be removed by precipitation and filtration technologies.

Of the three week long sampling episodes, the one from which BPT/BAT limits were developed had no dioxins detected in the influent or effluent. At the other two facilities, HpCDD, HpCDF, OCDD, and OCDF were detected in the influent and none were detected in the effluent. Both facilities employed a combination of chemical precipitation and filtration that may have contributed to these removals.

The most toxic congener, 2,3,7,8-TCDD, was never detected in Industrial Waste Combustor scrubber water during the sampling program; and the CDD/CDFs detected were neither detected at most facilities sampled nor found in any significant quantity. The toxic equivalent (TEQ) values found in the Industrial Waste Combustor wastewater were low values when compared to other dioxin sources in industry. The detected congeners were of the highly chlorinated type which may be treated by the methods recommended by this guideline (chemical precipitation, filtration). Also, since no dioxins were detected in the treated effluents at any of the three facilities EPA sampled, this may be evidence of dioxin removals.

Based on EPA's sampling program, no CDD/CDF meet the criteria for regulation in today's proposed rule.

The Agency has proposed CDD/CDF emission limits of 0.2 ng/dscm from the stacks of hazardous waste burning incinerators (see 61 FR 17358 of April 19, 1996 and 62 FR 24212 of May 2, 1997), and believes that the incinerators have to operate with good combustion conditions to meet the proposed emission limits. In the final LDR rulemaking that set treatment standards for CDD/CDF constituents in non-wastewater and wastewater forms of EPA Hazardous Waste Number: F032, the Agency has established (62 FR 26000 of May 12, 1997) incineration as the BDAT, after which the CDD/CDF constituents do not have to be analyzed in the effluent. EPA, therefore, considers that dioxins/furans will be sufficiently destroyed given good combustion practices.

E. Available Technologies

All 11 in-scope Industrial Waste Combustor facilities operate wastewater treatment systems. The range of treatment technologies used are similar to those in use at other categorical industries. The technologies used include physical-chemical treatment, and advanced wastewater treatment. Based on information obtained from the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire and site visits, EPA has concluded that a significant number of these treatment systems need to be upgraded to improve effectiveness and to remove additional pollutants.

Physical-chemical treatment technologies in use are:

- Precipitation/Filtration, which converts soluble metal salts to insoluble metal oxides which are then removed by filtration;
- Activated Carbon, which removes pollutants from wastewater by adsorbing them onto carbon particles;
- Multi-media/Sand Filtration, which removes solids from wastewater by passing it through a porous medium;
- Coagulation/Flocculation, which is used to assist clarification in physical-chemical treatment.

An advanced wastewater treatment technology in use is ultrafiltration, which is used to remove organic and inorganic pollutants from wastewater according to the molecule size.

The typical treatment sequence for a facility does not depend upon the type of waste accepted for treatment. In addition, most facilities use precipitation/filtration to remove metals.

F. Rationale for Selection of the Technology Basis of the Proposed Regulations

To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily effluent data collected from the Detailed Monitoring Questionnaire, the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, facility NPDES permits, facility POTW permits, and the EPA wastewater sampling program. This database was used to develop the BPT, BCT, BAT, NSPS, PSES, and PSNS effluent limitations and standards proposed today.

1. BPT

a. Introduction. The BPT effluent limitations proposed today would control identified conventional, priority, and non-conventional pollutants when discharged from industrial waste combustor facilities.

b. Rationale for BPT Limitations. As previously noted, the Industrial Waste Combustors receive for combustion large quantities of hazardous and non-hazardous industrial waste which results in discharges of a significant quantity of pollutants. The EPA estimates that 291,000 pounds per year of TSS and metal pollutants are currently being discharged directly or indirectly to the nations waters.

As previously discussed, Section 304(b)(1)(A) requires EPA to identify effluent reductions attainable through the application of ''best practicable control technology currently available for classes and categories of point sources.'' The Senate Report for the 1972 amendments to the CWA explained how EPA must establish BPT effluent reduction levels. Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher level of control than any currently in place if the technology to achieve those levels can be practically applied. See *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972,* U.S. Senate Committee on Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost reasonableness assessment for BPT limitations. In determining BPT limitations, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved by such technology. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are ''wholly out of proportion to the costs of achieving such marginal level of reduction.'' See *Legislative History,* op.cit.,p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA,* 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle,* 590 F. 2D 1011 (D.C. Cir. 1978).

EPA concluded that the wastewater treatment performance of the facilities it surveyed was, with very limited exceptions, inadequate and that only

two facilities are using best practicable, currently available technology. Moreover, EPA only found a significant number of pollutants at ''treatable levels'' at one of the facilities. Thus, the proposed BPT effluent limitations will be based on data from this one treatment system only.

The inadequate pollutant removal performance observed generally for discharging Industrial Waste Combustor facilities is not unexpected. As pointed out previously, these facilities are burning highly variable wastes that, in many cases, are process residuals and sludges from other point source categories. EPA's review of permit limitations for the direct dischargers show that, in most cases, the dischargers are subject to ''best professional judgment'' concentration limitations which were developed from guidelines for facilities treating and discharging more specific waste streams (e.g. OCPSF limitations).

The Agency is today proposing BPT limitations for 9 pollutants. EPA considered two regulatory options to reduce the discharge of pollutants by Industrial Waste Combustor facilities. For a more detailed discussion of the basis for the limitations and technologies selected see the Technical Development Document.

The two currently available treatment systems for which the EPA assessed performance for BPT are:

- *Option A—Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, and Solid-Liquid Separation.* Under Option A, BPT limitations would be based upon two stages of chemical precipitation, each followed by some form of separation and sludge dewatering. The pH's used for chemical precipitation would vary to promote optimal removal of metals because different metals are preferentially removed at different pH levels. In addition, the first stage of chemical precipitation is preceded by chromium reduction, when necessary. In some cases, BPT limitations would require the current treatment technologies in place to be improved by use of increased quantities of treatment chemicals and additional chemical precipitation/sludge dewatering systems.
- *Option B—Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, Solid-Liquid Separation, and Sand Filtration.* The second option evaluated for BPT for Industrial Waste Combustor facilities would be based on the same technology as Option A with the addition of sand filtration at the end of the treatment train.

The Agency is proposing to adopt BPT effluent limitations based on Option B for the Industrial Waste Combustors. These limitations were developed based on an engineering evaluation of the average level of pollutant reduction achieved through application of the best demonstrated methods to control the discharges of the regulated pollutants.

EPA's decision to base BPT limitations on Option B treatment reflects primarily an evaluation of three factors: the degree of effluent reduction attainable, the total cost of the proposed treatment technologies in relation to the effluent reductions achieved, and potential non-water quality benefits. In assessing BPT, EPA considered the age, size, process, other engineering factors, and non-water quality impacts pertinent to the facilities treating wastes in this industry. No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors. Neither the age nor the size of the Industrial waste combustor facility will significantly affect either the character or treatability of the Industrial Waste Combustor wastes or the cost of treatment. Further, the treatment process and engineering aspects of the technologies considered have a relatively insignificant effect because in most cases they represent fine tuning or add-ons to treatment technology already in use. These factors consequently did not weigh heavily in the development of these guidelines. For a service industry whose service is combustion, the most pertinent factors for establishing the limitations are costs of treatment, the level of effluent reductions obtainable, and non-water quality effects.

Generally, for purposes of defining BPT effluent limitations, EPA looks at the performance of the best operated treatment system and calculates limitations from some level of average performance of these ''best'' facilities. For example, in the BPT limitations for the OCPSF Category, EPA identified ''best'' facilities on a BOD performance criteria of achieving a 95 percent BOD removal or a BOD effluent level of 40 mg/1 (54 FR 42535, November 5, 1987). For this industry, as previously explained, EPA concluded that treatment performance is, in all but two cases, inadequate. Without two stages of precipitation at different pH levels, metal removal levels are uniformly inadequate across the industry. Also, since the specific technologies employed by these two facilities were not the same, the data from these facilities could not be combined to determine BPT performance and costs. Consequently, BPT performance levels are based on data from the one well-operated system using two stages for metals precipitation at different pH levels that was sampled by EPA. EPA, of course, welcomes any additional data which currently operating facilities may have on the performance of their wastewater treatment operations.

The demonstrated effluent reductions attainable through the Option B control technology represent the BPT performance attainable through the application of demonstrated treatment measures currently in operation in this industry. The Agency is proposing to adopt BPT limitations based on the performance of the Option B treatment system for the following reasons. First, these removals are demonstrated by a facility and can readily be applied to all facilities. The adoption of this level of control would represent a significant reduction in pollutants discharged into the environment (from 181,00 to 54,000 pounds of TSS and metals). Second, the Agency assessed the total cost of water pollution controls likely to be incurred for Option B in relation to the effluent reduction benefits and determined these costs were economically reasonable.

EPA estimated the cost of installing Option A and B BPT technologies at the direct discharging facilities. The pretax total estimated annualized cost in 1992 dollars is approximately $1.736 million (if BPT is Option A) and approximately $1.952 million (if BPT is Option B). EPA concluded the cost of installation of either of these control technologies is clearly economically achievable. EPA's assessment shows that none of the direct discharging facilities will experience a line closure as a result of the installation of the necessary technology.

The Agency proposes to reject Option A because, EPA concluded that not using sand filtration as the final treatment step is not the best practicable treatment technology currently in operation for the industry. Consequently, effluent levels associated with this treatment option would not represent BPT performance levels. Also, Option A was rejected because the greater removals obtained through addition of sand filtration at Option B were obtained at a relatively insignificant increase in costs over Option A.

2. BCT

In today's rule, EPA is proposing effluent limitations guidelines and standards equivalent to the BPT guidelines for the conventional pollutants covered under BPT. In developing BCT limits. EPA considered

whether there are technologies that achieve greater removals of conventional pollutants that proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines and standards.

3. BAT

EPA today is proposing BAT effluent limitations for the Industrial Waste Combustors based on the same technologies selected for BPT. The BAT effluent limitations proposed today would control identified priority and non-conventional pollutants discharged from facilities.

EPA has not identified a more stringent treatment technology option which it considered to represent BAT level of control applicable to facilities in this industry. EPA considered and rejected zero discharge as possible BAT technology for the reasons explained below.

4. New Source Performance Standards

As previously noted, under Section 306 of the Act, new industrial direct dischargers must comply with standards which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, operating methods and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

EPA is proposing NSPS that would control the same conventional, priority, and non-conventional pollutants proposed for control by the BPT effluent limitations. The technologies used to control pollutants at existing facilities are fully applicable to new facilities. Furthermore, EPA has not identified any technologies or combinations of technologies that are demonstrated for new sources that are more effective than those used to establish BPT/BCT/BAT for existing sources. Therefore, EPA is proposing NSPS limitations that are identical to those proposed for BPT/BCT/BAT. Again, the Agency is requesting comments to provide information and data on other treatment systems that may be pertinent to the development of standards for this industry.

EPA is specifically considering whether it should adopt BPT/BAT and NSPS of zero discharge, since so many facilities are currently not generating or not discharging any wastewater as a result of their industry waste combustor operations (see action IV.A. of today's notice). There are two primary means of achieving zero discharge: the use of dry scrubbing operations or off-site disposal of Industrial Waste Combustor wastewater. EPA evaluated the cost for facilities to dispose of their industrial waste combustor wastewater off-site and found it was less expensive than on-site treatment of the wastewater for only 3 of the eleven facilities. EPA also evaluated the cost for facilities to burn the industrial waste combustor wastewater streams they generated and found that is was also significantly more costly than wastewater treatment. EPA did not evaluate the cost for all facilities to replace their wet scrubbing systems with dry scrubbing systems, as the wet scrubbing systems have been established as the best performers (according to the HWC proposed regulation) for removing acid gases and dioxins from effluent gas streams. Also, dry scrubbing systems have an adverse affect of generating an unstable solid to be disposed of in a landfill, as opposed to the stable solids generated by wastewater treatment of air pollution control wastewater. Given the apparent environmental superiority of wet versus dry scrubbers, EPA has decided a zero discharge requirement could have unacceptable non-water quality effects. EPA also did not evaluate the cost of all facilities to recycle their industrial waste combustor wastewater, as EPA discovered that only certain types of air pollution control systems working in conjunction with one another are able to accomplish total recycle of wastewater. Thus, new air pollution control systems would have to be costed for all facilities along with recycling systems.

Overall, zero discharge is not being proposed at BPT/BAT because EPA believes that the cost to facilities of changing current air pollution control systems are too high. Also, zero discharge is not being proposed at BPT/BAT or NSPS because the change may cause unacceptable non-water quality impacts. EPA is requesting comments on its decision not to propose zero discharge for BPT/BAT and/or NSPS.

5. Pretreatment Standards for Existing Sources

Indirect dischargers in the Industrial Waste Combustor Industry, like the direct dischargers, accept for treatment wastes containing many priority and non-conventional pollutants. As in the case of direct dischargers, indirect dischargers may be expected to discharge many of these non-combustible low-volatility pollutants to POTWs at significant mass and concentration levels. EPA estimates that indirect dischargers annually discharge approximately 110,000 pounds of TSS and metals to POTWs.

Section 307(b) of the Act requires EPA to promulgate pretreatment standards to prevent pass-through of pollutants from POTWs to waters of the U.S. or to prevent pollutants from interfering with the operation of POTWs. EPA is establishing PSES for this industry to prevent pass-through of the same pollutants controlled by BPT/BAT from POTWs to waters of the U.S.

a. Pass-Through Analysis. Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by the industry pass through a POTW or interfere with the POTW operation or sludge disposal practices. In determining whether pollutants through a POTW, the Agency compares the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BPT/BAT. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities complying with BPT/BAT effluent limitation guidelines for that pollutant.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) that standards for indirect dischargers be equivalent to standards for direct dischargers and (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by the POTW with the mass or concentration of pollutants discharged by a BPT/BAT facility, EPA compares the percentage of the pollutants removed by the plant with the POTW removal. EPA takes this approach because a comparison of mass or concentration of pollutants in a POTW effluent with pollutants in a BPT/BAT facility's effluent would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the

pollutants in the POTW effluent to lower concentrations from the addition of large amounts of non-industrial wastewater.

For past effluent guidelines, a study of 50 well-operated POTWs was used for the pass-through analysis. This study is referred to as the ''The Fate of Priority Pollutants in Publicly Owned Treatment Works'', September 1982 [EPA 440/1–82/303]. Because the data collected for evaluating POTW removals included influent levels of pollutants that were close to the detection limit, the POTW data were edited to eliminate influent levels less than 10 times the minimum level and the corresponding effluent values, except in the cases where none of the influent concentrations exceeded 10 times the minimum level. In the latter case, where no influent data exceeded 10 times the minimum level, the data were edited to eliminate influent values less than 5 times the minimum level. Further, where no influent data exceeded 5 times the minimum level, the data were edited to eliminate influent values less than 20 µg/l and the corresponding effluent values. These editing rules were used to allow for the possibility that low POTW removal simply reflected the low influent levels.

EPA then averaged the remaining influent data and also averaged the remaining effluent data from the 50 POTW database. The percent removals achieved for each pollutant were determined from these averaged influent and effluent levels. This percent removal was then compared to the percent removal for the BPT/BAT option treatment technology. Due to the large number of pollutants applicable for this industry, additional data from the EPA Risk Reduction Engineering Laboratory (RREL) database (Now renamed the National Risk Management Research Laboratory database) was used to augment the POTW database for the pollutants not covered by the 50 POTW Study. Based on this analysis, all of the pollutants regulated under BPT/BAT Options A and B passed through POTWs and are proposed for regulation for PSES.

b. Options Considered. EPA considered the same two regulatory options as in the BPT/BCT/BAT analysis to reduce the discharge of pollutants by Industrial Waste Combustor facilities. For a more detailed discussion of the basis for the limitations and technologies selected see the Technical Development Document. The Agency is proposing to adopt PSES effluent limitations based on Option A for the Industrial Waste Combustors. The technology for Options A and B are the same except that option A does not require the use of sand filtration as the last treatment step.

In assessing PSES, EPA considered the age, size, process, other engineering factors, and non-water quality impacts pertinent to the facilities treating wastes in this subcategory. No basis could be found for identifying different PSES limitations based on age, size, process or other engineering factors.

These proposed standards would apply to existing facilities in the Industrial Waste Combustor Industry that discharge wastewater to publicly-owned treatment works (POTWs). PSES set at these points would prevent pass-through of pollutants and help control sludge contamination.

EPA estimated the cost and economic impact of installing Option A and B PSES technologies at the indirect discharging facilities. The pretax total estimated annualized cost in 1992 dollars is approximately $758 thousand (if PSES is Option A) and approximately $798 thousand (if PSES is Option B). EPA concluded the cost of installation of either of these control technologies is clearly economically achievable. EPA's assessment shows that only one of the indirect discharging facilities will experience a line closure as a result of the installation of the necessary technology.

EPA is not, however, proposing PSES based on Option B for the following reasons. EPA has determined that, after achieving Option A treatment levels, the regulated BAT pollutants do not pass through in amounts that would justify requiring the additional Option B treatment step, sand filtration. The additional removals obtained by sand filtration are small, less than 57 lb.eq. per year discharged to receiving streams. POTW removals for the regulated pollutants range from 59 percent to 90 percent. The total additional removals associated with the Option B technology represents less than one percent of total lb.eq. removals. Consequently, requiring PSES limits based on the Option B technology is not justified by the small quantity of pollutants involved.

EPA is asking for comment on whether it should adopt Option B as PSES for this subcategory, given that annual costs are not significantly higher than Option A. Further information is provided in the Economic Analysis.

6. Pretreatment Standards for New Sources

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time it promulgates new source performance standards (NSPS). New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies, including process changes, in-facility controls, and end-of-pipe treatment technologies.

As set forth in Section VI.F.5(a) of this notice, EPA determined that all of the pollutants selected for regulation for the Industrial Waste Combustor Industry pass through POTWs. The same technologies discussed previously for PSES are available as the basis for PSNS.

EPA is proposing that pretreatment standards for new sources be set equal to PSES for priority and non-conventional pollutants. The Agency is proposing to establish PSNS for the same priority and non-conventional pollutants as are being proposed for PSES. EPA is requesting comment on whether it should adopt PSNS based on Option B, given the increased removals that would be achieved by the addition of sand filtration.

EPA considered the cost of the proposed PSNS technology for new facilities. EPA concluded that such costs are not so great as to present a barrier to entry, as demonstrated by the fact that currently operating facilities are using these technologies. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected PSNS.

G. Development of Numerical Limitations

The proposed effluent limitations guidelines and standards in today's notice are based upon statistical procedures. This section describes the assumptions used as the basis for developing these numerical limitations.

The assumptions are: (1) Individual pollutant effluent measurements are delta-lognormal in probability distribution, (2) on a long-term average basis, good engineering practice will allow appropriately designed and well-operated wastewater treatment systems to perform at least as well as the observed performance of the system whose data were used to develop the limitations, (3) an allowance for the observed process variability will allow for the normal process variation associated with both combustion and a well-designed and operated treatment system, and (4) process variation within certain classes of pollutants, such as metals, are approximately equal.

The proposed pollutant limitations for each option, as presented in today's

notice, are provided as daily maximums and maximums for monthly averages. For total suspended solids, the maximum for monthly average limitation is based on a monitoring frequency of 20 samples per month, that is roughly one sample per weekday. In all other cases, the maximum for monthly average limitation is based on a monitoring frequency of four samples per month, that is one sample per week. The limitations were based upon pollutant concentrations collected from EPA sampling episodes. Data sources are described in Sections IV.B. A detailed explanation of the statistical procedures is provided in the statistical support document. The actual limitations are presented in the regulatory text following the preamble.

Because EPA is assuming that TSS will be monitored daily, the limitation based on the probability distribution of 20-day averages. If concentrations measured on consecutive days are correlated, then autocorrelation would have an effect on this probability distribution. However, the combustion data used to calculate the variability of the 20-day average was consecutive daily measurements from a 5-day sampling episode. Therefore, at this time, EPA does not have sufficient data to examine in detail and incorporate (if statistically significant) any autocorrelation between concentrations measured on adjacent days. However, EPA believes that autocorrelation may not be present in daily measurements of wastewater from this industry. Unlike other industries, where the industrial processes are expected to produce the same type of wastewater from one day to the next, the wastewater from the Industrial Waste Combustion industry is generated by treating wastes from different sources and industrial processes. The wastes treated on a given day will often be different than the waste treated on the following day. Because of this, autocorrelation is not expected to be present in measurements of wastewater from the Industrial Waste Combustion industry. In Section IX.B.7., EPA requests additional wastewater monitoring data. EPA will use these data to further evaluate autocorrelation in the TSS data.

VII. Costs and Impacts of Regulatory Alternative

A. Costs

The Agency estimated the cost for Industrial Waste Combustor facilities to achieve each of the effluent limitations and standards proposed today. These estimated costs are summarized in this section and discussed in more detail in the TDD. All cost estimates in this section are expressed in terms of 1992 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance costs associated with that equipment, additional costs for discharge monitoring, and costs for facilities to modify existing RCRA permits. In Section VII.C., costs are expressed in terms of a different cost component, total annualized cost. The total annualized cost, which is used to estimate economic impacts, better describes the actual compliance cost that a company will incur, allowing for interest, depreciation, and taxes. A summary of the economic analysis for the proposed regulation is contained in Section VII.C. of today's notice.

1. BPT Costs

The Agency estimated the cost of implementing the proposed BPT effluent limitations by calculating the engineering costs of meeting the required effluent reductions for each direct discharging Industrial Waste Combustor facility. This facility-specific engineering cost assessment for BPT began with a review of present waste treatment technologies. For facilities without treatment technology in-place equivalent to the BPT technology, EPA estimated the cost to upgrade its treatment technology, to use additional treatment chemicals to achieve the new discharge standards, and to employ additional personnel, where applicable for the option. The only facilities given no cost for compliance were facilities with the treatment-in-place prescribed for that option. The Agency believes that this approach overestimates the costs to achieve the proposed BPT because many facilities can achieve BPT level discharges without using all of the components of the technology basis described in Section VI.E. The Agency solicits comment on these costing assumptions. Table VII.A–1 summarizes the capital expenditures and annual O&M costs for implementing BPT. The capital expenditures for the process change component of BPT are estimated to be $6.346 million with annual O&M costs of $1.255 million for Regulatory Option B. A complete discussion of the costs for Regulatory Options A and B may be found in the TDD.

TABLE VII.A–1.—COST OF IMPLEMENTING BPT REGULATIONS

[In millions of 1992 dollars]

Regulatory option	Number of facilities	Capital costs	Annual O&M costs
Regulatory Option B	8	6.346	1.255

2. BCT/BAT Costs

The Agency estimated that there would be no cost of compliance for implementing BCT/BAT, because the technology and effluent limitations are identical to BPT and the costs are included with BPT.

3. PSES Costs

The Agency estimated the cost for implementing PSES with the same assumptions and methodology used to estimate cost of implementing BPT/BAT. A complete discussion of the costs for Regulatory Options A and B may be found in the TDD. Table VII.A–2 summarizes the capital expenditures and annual O&M costs for implementing PSES. Costs are presented only for the selected option, Option A. The capital expenditures for the process change component of PSES are estimated to be $2.090 million with annual O&M costs of $0.528 million for Regulatory Option A.

TABLE VII.A–2.—COST OF IMPLEMENTING PSES REGULATIONS

[In millions of 1992 dollars]

Option	Number of facilities	Capital costs	Annual O&M costs
Option A	3	2.090	0.528

B. Pollutant Reductions

The Agency estimated the reduction in the mass of pollutants that would be discharged from Industrial Waste Combustor facilities after the implementation of the regulations being proposed today.

1. Conventional Pollutant Reductions

EPA has calculated how much adoption of the proposed BPT/BCT limitations would reduce the total quantity of conventional pollutants that are discharged. To do this, the Agency developed an estimate of the long-term average loading (LTA) of TSS that would be discharged after the implementation of BPT. Next, the BPT/BCT LTA for TSS was multiplied by 1992 wastewater flows for each direct discharging facility to calculate BPT/BCT mass discharge loadings for TSS for each facility. The BPT/BCT mass discharge loading was subtracted from the estimated current loadings to calculate the pollutant reductions for each facility. The Agency estimates that the proposed regulations will reduce TSS discharges by approximately 88 thousand pounds per year for Regulatory Option A (two-stage chemical precipitation) and by 120 thousand pounds per year for Regulatory Option B (Regulatory Option A followed by sand filtration).

2. Priority and Nonconventional Pollutant Reductions

a. Methodology. Today's proposal, if promulgated, will also reduce discharges of priority and non-conventional pollutants. Applying the same methodology used to estimate conventional pollutant reductions attributable to application of BPT/BCT control technology, EPA has also estimated priority and non-conventional pollutant reductions for each facility. Because EPA has proposed BAT limitations equivalent to BPT, there are no further pollutant reductions associated with BAT limitations.

Current loadings were estimated by using the following data sources: the Waste Treatment Industry Phase II: Incinerators Questionnaire; the Detailed Monitoring Questionnaire; the Agency field sampling program; and, facility wastewater permit information. For many facilities, data were not available for all pollutants of concern or without the addition of other out-of-scope Industrial Waste Combustor wastewater. Therefore, methodologies were developed to estimate current performance by assessing performance of on-site treatment technologies, and by comparing combustion unit types to other facilities for which data was available, as described in Section VI.B.

b. Direct Facility Discharges (BPT/BAT). The estimated reductions in pollutants directly discharged in treated final effluent resulting from implementation of BPT/BAT are listed in Table VII.B–1. Pollutant reductions are presented only for the selected Option, Option B. Data for the other regulatory option considered, Option A, may be found in the TDD. The Agency estimates that proposed BPT/BAT regulations will reduce direct facility discharges of priority, and non-conventional pollutants by about 7 thousand pounds per year for Option B.

TABLE VII.B–1.—REDUCTION IN DIRECT DISCHARGE OF PRIORITY AND NONCONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF BPT/BAT REGULATIONS (UNITS = LBS/YEAR)

Option	Metal compounds	Organic compounds
Option B	6,767	0[1]

[1] The organic compounds pollutant reduction was estimated to be 0, because no facilities had the treatment-in-place for removal of organic compounds and treatment for the removal of organic compounds was not costed.

c. PSES Effluent Discharges to POTWs. The estimated reductions in pollutants indirectly discharged to POTWs resulting from implementation of PSES are listed in Table VII.B–2. Pollutant reductions are presented only for the selected Option, Option A. Data for the other regulatory option considered, Option B, may be found in the TDD. The Agency estimates that proposed PSES regulations will reduce indirect facility discharge to POTWs by 47 thousand pounds per year for Option A.

TABLE VII.B–2.—REDUCTION IN INDIRECT DISCHARGE OF PRIORITY AND NONCONVENTIONAL POLLUTANTS TO POTWS AFTER IMPLEMENTATION OF PSES REGULATIONS (UNITS = LBS/YEAR)

	Metal compounds	Organic compounds
Option A	47,276	0

C. Economic Analysis

I. Introduction and Overview

This section of the notice reviews EPA's analysis of the economic impacts of the regulation. EPA's detailed economic impact assessment can be found in the report titled ''Economic Analysis and Cost-Effectiveness Analysis of the Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors'' (hereafter ''EA''). The report estimates the economic effect on the industry of compliance with the regulation in terms of facility closures (severe impacts) and financial impacts short of closure (moderate impacts). The report also includes an analysis of the effects of the regulation on new Industrial Waste Combustor facilities and detailed impacts on small businesses and other small entities. A section of the EA presents an analysis of the cost-effectiveness of the proposed regulation.

The total costs for the proposed regulatory options are presented in Table VII.C–1. The proposed regulatory option for BPT/BCT/BAT is Option B (see Section VI.F.), which is estimated to have a total post-tax annualized cost of $1,381,000. The proposed regulatory option for PSES is Option A (see Section VI.F.), which is estimated to have a total post-tax annualized cost of $531,000.

TABLE VII.C–1.—TOTAL COSTS OF PROPOSED REGULATORY OPTIONS

Proposed options	Total capital costs (mil 1992$)	Total O&M costs (mil 1992$)	Total post-tax annualized costs (mil 1992$)
BPT/BCT/BAT=Option B	6.346	1.255	1.381
PSES=Option A	2.090	0.529	0.531

2. Baseline Conditions

The first step in the development of an economic analysis is the definition of the baseline state from which any changes are to be measured. The baseline should be the best assessment of the way the industry would look absent the proposed regulation. In this case, the baseline has been set by assuming the status quo will continue absent the enactment of the regulation.

In the course of the regulatory development, EPA found that six potentially affected facilities had either closed entirely or discontinued burning waste. The six facilities were extracted from the analysis. An after tax cash flow test was conducted on the remaining facilities for which sufficient data was available. The test consisted of calculating the after tax cash flows for each facility for both 1991 and 1992. If a facility experienced negative after tax cash flows in both years, the facility was deemed to be a baseline closure. No facilities failed the test, thus no facilities were deemed to be baseline closures.

In recent years, Industrial Waste Combustors have been affected by a number of opposing forces. Declines in waste volumes and disposal prices have been attributed to waste minimization by waste generators, intense price competition driven by overcapacity, and changes in the competitive balance between cement kilns (and other commercial BIFs) and commercial incinerators. The noted negative trends have been offset by factors such as increased overall waste generation as part of general economic improvement, Industrial Waste Combustors' consolidation, and reductions in on-site combustion. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities.

The Agency recognizes that its data base, which represents conditions in 1992, may not precisely reflect current conditions in the industry today. EPA recognizes that the questionnaire data were obtained several years ago and thus may not precisely mirror present conditions at every facility. Nevertheless, EPA concludes that the data provide a sound and reasonable basis for assessing the overall ability of the industry to achieve compliance with the regulations. The purpose of the analysis is to characterize the impact of the proposed regulation for the industry as a whole.

3. Methodology

EPA applies two financial tests to determine facility level economic impacts. The first is the after tax cash flow test. This test examines whether a facility loses money on a cash basis. The second test is the ratio of the facility's estimated compliance costs to the facility's revenue. These two tests were conducted at one of two levels: if the majority of the facility revenue is derived from combustion services, the tests are conducted at the facility level; however, if revenues from combustion services, the tests are conducted at the facility level; however, if revenues from combustion are not the majority of facility revenue, then the tests are conducted at waste treatment operations level if the data is available, and at the facility level as well.

The economic impact analysis measures three types of primary impacts: severe impacts (facility closures), moderate impacts (facility impacts short of closure), and job losses. Each impact analysis measure is reviewed briefly below.

- *Severe Impacts:* Severe impacts, defined as facility closures or cessation of waste treatment operations, were assessed on the finding that the regulation would be expected to cause a facility to incur, on average, negative after tax cash flow over the two-year period of analysis.
- *Moderate Impacts:* Moderate impacts were defined as a financial impact short of entire facility closure. All facilities were assessed for the incurrence of total annualized compliance costs exceeding five percent of facility revenue.
- *Employment losses:* Possible employment losses were assessed for facilities estimated to close or discontinue waste treatment operations as a result of regulation.

The economic impact analysis for the proposed Industrial Waste Combustor regulation assumes that Industrial Waste Combustor facilities would not be able to pass the costs of compliance on to their customers through price increases. While a zero cost pass-through assumption is typically characterized as a conservative assumption, in this case, it is presumably an accurate assumption as the affected facilities represent only a portion of the broader combustion services industry.

4. Cost Reasonableness and Economic Impacts of Proposed BPT/BCT/BAT

The statutory requirements for the assessment of BPT options are that the total cost of treatment options must not be wholly disproportionate to the additional effluent benefits obtained. EPA evaluates treatment options by first calculating pre-tax total annualized

costs and total pollutant removals in pounds. The ratio of the costs to the removals for each option is then evaluated relative to one another. The selected option is then compared to the range of ratios in previous regulations to gauge its impact. The results of the analysis are presented in Table VII.C–2. Option A has a ratio of $19 per lb. while option B has a ratio of $15 per lb. Option B provides significant additional pollutant removals at a relatively low cost, thus it is the selected option. Option B is also found to be within the historical bounds of BPT cost to removal ratios.

TABLE VII.C–2.—BPT COST REASONABLENESS ANALYSIS

Option	Pre-tax total annualized costs (mil 1992$)	Total removals (lbs)	Average cost reasonableness (1992 $/lb)
A	$1,736	93,443	$19
B	1,952	126,435	15

The proposed regulatory option for BPT/BCT/BAT is option B. The postcompliance analysis under option B projects no severe or moderate impacts to any of the affected facilities. The analysis estimates no facility closures, no cessation of waste burning operations, and no associated job losses resulting from compliance with the proposed option.

TABLE VII.C–3.—IMPACTS OF EVALUATED BPT/BCT/BAT OPTIONS

Option	Post-tax total annualized costs (mil 1992$)	Severe impacts (closures)	Moderate impacts (TAC/revenues >5%)	Employment losses (FTEs)
A	$1.232	0	0	0
B	1.381	0	0	0

5. Economic Impacts of Proposed PSES

The proposed regulatory option for PSES is Option A. The postcompliance analysis under the selected option projects one facility will discontinue waste burning operations. The facility as a whole is projected to remain open. The waste burning operations of this facility represent significantly less than 10 percent of total facility revenue. The cessation of waste burning operations are estimated to cause 27 job losses on a full-time equivalent basis (FTE). No other facilities are projected to suffer either severe or moderate impacts.

TABLE VII.C–4.—IMPACTS OF EVALUATED PSES OPTIONS

Option	Post-tax total annualized costs (mil 1992$)	Severe impacts (closures)	Moderate impacts (TAC/revenues >5%)	Employment losses (FTEs)
A	$0.531	1	0	27
B	0.559	1	0	27

6. Economic Impacts of Proposed NSPS and PSNS

EPA is establishing NSPS limitations equivalent to the limitations that are established for BPT/BCT/BAT. BPT/BCT/BAT limitations are found to be economically achievable; therefore, NSPS limitations will not present a barrier to entry for new facilities.

EPA is setting PSNS equal to PSES limitations for existing sources. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. As a result, given EPA's finding of economic achievability for the PSES regulation, EPA also finds that the PSNS regulation will be economically achievable and will not constitute a barrier to entry for new sources.

7. Firm-Level Impacts

The firm level analysis evaluates the effects of regulatory compliance on firms owning one or more affected Industrial Waste Combustor facilities. It also serves to identify impacts not captured in the facility level analysis. For example, some companies might be too weak financially to undertake the investment in the required effluent treatment, even though the investment might seem financially feasible at the facility level. Such circumstances can exist at companies owning more than one facility subject to regulation.

The firm-level analysis assesses the impacts of compliance costs at all facilities owned by the firm. These impacts are assessed using ratio analysis, which employs two indicators of financial viability: the rate of return on assets (ROA) and the interest coverage ratio (ICR). ROA is a measure of the profitability of a company's capital assets. It is computed as the earnings before interest and taxes minus taxes divided by total assets. ICR is a measure of the financial leverage of a company. It is computed as the earnings before interest and taxes divided by interest expense.

Two firms each own three affected Industrial Waste Combustor facilities and are subjected to the ratio analysis. The first step is to calculate the baseline ROA and ICR for each company absent the proposed regulation. The post-compliance analysis then calculates the ratios after the projected investment in wastewater treatment equipment and the associated compliance costs. One firm experiences no measurable effect as the result of compliance with the proposed regulation. Neither the ROA nor the ICR changes between the baseline and postcompliance analysis. The second firm experiences an insignificant decline in ROA and a minor decline in ICR. The decline in ICR, while significant in percentage terms, is an artifact of the firm's extremely low level of debt. As a result, the two firms are found to be not significantly impacted by the proposed regulation.

8. Community Impacts

Community impacts are assessed by estimating the expected change in employment in communities with combustors that are affected by the proposed regulation. Possible community employment effects include the employment losses in the facilities that are expected to close because of the regulation and the related employment losses in other businesses in the affected community. In addition to these estimated employment losses, employment may increase as a result of facilities' operation of treatment systems for regulatory compliance. It should be noted that job gains will mitigate community employment losses only if they occur in the same communities in which facility closures occur.

The proposed regulation is estimated to result in the postcompliance closure of the waste burning operations of one facility. The postcompliance closure results in the direct loss of 27 Full-Time Equivalent (FTE) positions. Secondary employment impacts are estimated based on multipliers that relate the change in employment in a directly affected industry to aggregate employment effects in linked industries and consumer businesses whose employment is affected by changes in the earnings and expenditures of the employees in the directly and indirectly affected industries. The application of the state specific multiplier of 5.334 to the 27 direct FTE losses leads to an estimated community impact of 144 total FTE losses as the result of the proposed rule. The county in which the closure is projected to occur has a current employment of 173,242 FTEs dispersed among 9,922 establishments. The direct and secondary job losses represent 0.08 percent of current employment in the affected county.

The FTE losses are mitigated by the job gains associated with the operation of control equipment which are estimated to be 9 FTEs nationally. The secondary and indirect effects can be estimated at the national level by using the average multiplier of 4.049, resulting in an estimate of 36 total FTE gains associated with the pollution control equipment.

9. Foreign Trade Impacts

The EA does not project any foreign trade impacts as a result of the effluent limitations guidelines and standards. Because most of the affected Industrial Waste Combustor facilities treat waste that is considered hazardous under RCRA, international trade in Industrial Waste Combustor services for treatment of hazardous wastes is virtually nonexistent.

10. Cost-Effectiveness Analysis

EPA also performed a cost-effectiveness analysis of the proposed BPT/BCT/BAT and PSES regulatory options. (A more detailed discussion can be found in the cost-effectiveness analysis section of the EA.) The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called ''pound-equivalents.'' The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb. eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not take into account the removal of conventional pollutants (e.g., oil and grease, biochemical oxygen demand, and total suspended solids).

For the cost-effectiveness analysis, the estimated pound-equivalents of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher will be the pollutant's toxic weighting factor; accordingly, the use of pound-equivalents gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyzes are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

The results of the cost-effectiveness analysis for the potential BPT/BCT/BAT options are presented in Table VII.C–5. The results for these options are presented for strictly illustrative purposes, as the selected option is to be proposed as BPT, which is subject to a cost reasonableness evaluation rather than the cost-effectiveness evaluation. The selected option is option B, which has an average cost-effectiveness of $65 per lb.eq. and an incremental (to option A) cost-effectiveness of $57 per lb.eq. This result reinforces the selection of option B for BPT/BCT/BAT as a significant incremental removal of toxic pollutants is achieved for a relatively low incremental cost.

TABLE VII.C–5.—BPT/BCT/BAT COST-EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs (mil 1981$)	Total removals (lb.eq.)	Average cost-effectiveness ($/lb.eq.)	Incremental cost-effectiveness ($/lb.eq.)
A	$1.231	18,581	$66	.....

TABLE VII.C–5.—BPT/BCT/BAT COST-EFFECTIVENESS ANALYSIS—Continued

Option	Pre-tax total annualized costs (mil 1981$)	Total removals (lb.eq.)	Average cost-effectiveness ($/lb.eq.)	Incremental cost-effectiveness ($/lb.eq.)
B	1.384	21,265	65	$57

The results of the cost-effectiveness analysis for the PSES regulatory options are presented in Table VII.C–6. The selected option is option A, which has an average and incremental cost-effectiveness of $85 per lb.eq. Option B has an average cost-effectiveness of $88 per lb.eq., but has an incremental (to option A) cost-effectiveness of $509 per lb.eq.

TABLE VII.C–6.—PSES COST-EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs (mil 1981$)	Total removals (lb.eq.), net of POTW removals	Average cost-effectiveness ($/lb.eq.)	Incremental cost-effectiveness ($/lb.eq.)
A	$0.538	6,349	$85	.....
B	0.566	6,405	88	$509

D. Water Quality Analysis and Other Environmental Benefits

1. Characterization of Pollutants

EPA evaluated the environmental benefits of controlling the discharges of 17 toxic and nonconventional pollutants from Industrial Waste Combustor facilities to surface waters and POTWs in national analyses of direct and indirect discharges. Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and water. Furthermore, these pollutants may also interfere with POTW operations in terms of inhibition of activated sludge or biological treatment and contamination of sewage sludges, thereby limiting the available method of disposal and thereby raising its costs. Many of these pollutants have at least one toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency did not evaluate the effects of three non-conventional pollutants since the analysis focused on toxic and nonconventional pollutants. However, the discharge of conventional pollutants such as total suspended solids (TSS), chemical oxygen demand (COD), and total dissolved solids (TDS), can have adverse effects on human health and the environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration, and thus primary productivity, or from accumulation of sludge particles that alter benthic spawning grounds and feeding habitats. High COD levels can deplete oxygen levels, which can result in mortality or other adverse effects on fish.

2. Direct Discharges

EPA evaluated the potential effect on aquatic life and human health of direct wastewater discharges to receiving waters at current levels of treatment and at proposed BPT/BAT treatment levels. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria guidance or to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration) for those chemicals for which EPA has not published water quality criteria. (In performing this analysis, EPA used its published guidance documents that recommend numeric human health and aquatic life water quality criteria for numerous pollutants. States often consult these guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, EPA used the nationwide criteria guidance as the most representative value). In addition, EPA assessed the potential benefits to human health by estimating the risks (carcinogenic and systemic effects) associated with reducing pollutant levels in fish tissue and drinking water from current to proposed treatment levels. EPA estimated risks for recreational and subsistence anglers and their families, as well as the general population. EPA performed these analyses for the eight direct Industrial Waste Combustor facilities currently in operation, modeling their discharge of 17 pollutants to eight receiving streams.

Current pollutant loadings (in pounds) of the 17 toxic and nonconventional pollutants modeled are reduced by 29 percent by the proposed BPT/BAT regulatory option. In-stream concentrations for nine pollutants are projected to exceed acute or chronic aquatic life criteria or toxic effect levels in four of the eight receiving streams. The proposed BPT/BAT will eliminate excursions of the acute criteria for one pollutant and the chronic criteria of a second pollutant. Current instream concentrations or toxic effect levels exceed human health criteria in, depending on how defined, at as many as half of the receiving streams. The proposed BPT/BAT limitations reduces these excursions to a limited extent.

The excess annual cancer cases at current pollutant loadings are projected to be much less than 0.5 from the ingestion of contaminated fish and drinking water by all populations evaluated. No benefits due to the reduction of cancer cases are projected to be achieved by the regulation. Systemic toxicant effects are projected for subsistence anglers in three of the receiving streams nationwide from three pollutants at current discharge levels. The proposed BPT/BAT regulated discharge levels will reduce the systemic toxicant effects to subsistence anglers on a single receiving stream and

pollutant, reducing the exposed population by 47 percent.

3. Indirect Dischargers

EPA also evaluated the aquatic life and human health impacts of POTW wastewater discharges of 17 pollutants on receiving stream water quality at current and proposed pretreatment levels for the three indirect discharging Industrial Waste Combustor facilities currently in operation. These three facilities discharge to three POTWs with outfalls located on three receiving streams. EPA predicted steady-state-in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria or to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration) for those chemicals for which EPA has not published water quality criteria. Nationwide criteria guidance were used as the most representative value. In addition, the potential benefits to human health were evaluated by estimating the potential reduction of carcinogenic risk and systemic effects from consuming contaminated fish and drinking water. Risks were again estimated for recreational and subsistence anglers and their families as well as the general population.

Current loadings (in pounds) of the 17 pollutants evaluated for water quality impacts are reduced 97 percent by the proposed pretreatment regulatory options.

EPA projects that in-stream concentrations of one pollutant will exceed human health criteria or toxic effect levels in one receiving stream at current discharge levels. The proposed pretreatment regulatory option eliminates this excursion. EPA also projects a single receiving stream with in-stream concentrations for one pollutant projected to exceed chronic aquatic life criteria or toxic effect levels at current discharge levels. This stream will no longer have this excursion under the proposed pretreatment. Estimates of the increase in value of recreational fishing to anglers as a result of this improvement range from $78,600 to $281,000 annually (1992 dollars).

The excess annual cancer cases at current pollutant loadings are projected to be much less than 0.5 from the ingestion of contaminated fish and drinking water by all populations evaluated. No benefits due to the reduction of cancer cases are projected to be achieved by the regulation. Systemic toxicant effects (non-cancer adverse health effects including reproductive toxicity) are projected for subsistence anglers in one receiving stream for two pollutants at current discharge levels. No systemic toxicant effects are projected at the proposed pretreatment level.

4. POTWs

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the three POTWs that received wastewater from Industrial Waste Combustors. Inhibition of POTW operations is estimated by comparing predicted POTW influent concentrations to available inhibition levels. Inhibition values were obtained from *Guidance Manual for Preventing Interference at POTWs* (U.S. EPA, 1987) and *CERCLA Site Discharges to POTWs: Guidance Manual* (U.S. EPA, 1990). Potential contamination of sewage sludge was estimated by comparing projected pollutant concentrations in POTW sewage sludge to available EPA criteria. The *Standards for the Use or Disposal of Sewage Sludge* (40 CFR Part 503) contain limits on the concentrations of pollutants in sewage sludge that is used or disposed. For the purpose of this analysis, the sewage sludge is considered contaminated if the concentration of a pollutant in sewage sludge exceeds the limits presented in 40 CFR Part 503 for land application of the slude or surface disposal.

EPA was able to evaluate 12 pollutants for potential POTW operation inhibition and seven pollutants for potential sewage sludge contamination. At current discharge levels, EPA projects inhibition problems at one of the POTWs, caused by one pollutant. At the proposed pretreatment regulatory option, EPA projects no inhibition problems at the POTW. The Agency projects sewage sludge contamination at two of the POTWs, caused by three pollutants at current discharge levels. At the proposed pretreatment regulatory option, EPA projects no biosolids contamination problems at these POTWs. EPA estimates that the savings in biosolids disposal costs to these POTWs is about $7,400 (1992 dollars) annually.

The POTW inhibition values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Therefore, EPA does not intend to base its regulatory approach for proposed pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness. Of course, as explained above. EPA did find that certain pollutants would pass through a basis for establishing pretreatment standards. Still, the values used in this analysis help indicate the potential benefits for POTW operations that may result from the compliance with proposed pretreatment discharge levels.

EPA evaluated the benefits of reducing contamination of sewage sludge in its analysis of projected POTW sewage sludge disposal practices at current and proposed pretreatment levels. Current levels resulted in two POTWs whose sewage sludge may not be land applied, although more expensive alternatives are available for disposal. EPA's analyses showed that of these two POTWs, one will shift into qualifying for land application of POTW sewage sludge under the proposed pretreatment regulatory option. Land application quality sewage sludge meets ceiling pollutant concentration limits, class B pathogen requirements, and vector attraction reduction requirements. Because costs for land application tend to be lower than those for other disposal methods, this shift away from incineration, co-disposal, and surface disposal results in a cost savings. The other POTW will upgrade from land application pollutant ceiling levels to the more stringent land application pollutant concentration limits. This POTW is expected to benefit through reduced record-keeping requirements and exemption from certain POTW biosolids management practices. However, EPA has not estimated a monetary value for these more modest benefits.

E. Non-water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act call for EPA to consider non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, waste treatment residual generation, and energy consumption.

1. Air Pollution

Industrial Waste Combustor facilities treat wastewater streams which contain very low concentrations of volatile organic compounds (VOCs). Specifically, the concentrations of VOCs are typically below treatable levels in industrial Waste Combustor wastewater streams.

Since there are only low concentrations of VOCs in Industrial

Waste Combustor wastewater, no significant air emissions could be generated by the proposed treatment technologies. Thus, EPA does not expect adverse air impacts due to the proposed regulations.

2. Waste Treatment Residuals

Waste treatment residuals would be generated due to the following technologies, if implemented, to meet proposed regulations: metals precipitation and sand filtration. The waste treatment residuals generated due to the implementation of the technologies discussed above were costed for off-site disposal in Subtitle C and D landfills. These costs were included in the economic evaluation of the proposed technologies.

EPA estimates that an additional 1.3 million pounds of sludge will be generated annually by 11 facilities from metals precipitation and sand filtration operations. EPA believes that the disposal of this filter cake would not have an adverse effect on the environment or result in the release of pollutants in the filter cake to other media. The disposal of these wastes into controlled Subtitle C or D landfills are strictly regulated by the RCRA program.

3. Energy Requirements

EPA estimates that the attainment of BPT, BCT, BAT, NSPS, PSES, and PSNS will increase energy consumption by a small increment over present industry use. Overall, and increase of 1,840 thousand Kilowatt hours per year would be required for the proposed regulation which equates to 1,031 barrels of oil per year. The United States consumed 19 million barrels of oil per day in 1994.

VIII. Related Acts of Congress and Executive Orders

A. Paperwork Reduction Act

The proposed effluent guidelines and standards contain no information collection activities and, therefore, no information collection request (ICR) has been submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that, whenever an agency is required to publish general notice of rulemaking for a proposed rule, the agency generally must prepare (and make available for public comment) an initial regulatory flexibility analysis (IRFA). The agency must prepare an IRFA for a proposed rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities. EPA is today certifying, pursuant to section 605(b) of the RFA, that the proposed rule will not have a significant economic impact on a substantial number of small entities Therefore, the Agency did not prepare an IRFA.

While EPA has so certified today's rule, the Agency nonetheless prepared a regulatory flexibility assessment equivalent to that required by the Regulatory Flexibility Act as modified by the Small Business Regulatory Enforcement Fairness Act of 1996. The assessment for this rule is detailed in the ''Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Industrial Waste Combustors''.

The proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the following reasons. The RFA defines ''small entity'' to mean a small business, small organization or small governmental jurisdiction. Today's proposal would establish requirements applicable only to commercial Industrial Waste Combustors. As previously explained, the eleven facilities that would be subject to the proposal if adopted, are all owned by large entities with firm revenues in excess of $230 million per year. Consequently, there are no small businesses that would be affected by the proposal. Therefore, the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated total annualized costs of the proposed rule as $2.16 million (1996$, post-tax). Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

D. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not proposing any new analytical test methods as part of today's proposed effluent limitations guidelines and standards. EPA performed literature searches to identify any analytical methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. The results of this search confirm EPA's determination to continue to rely on its existing analytical tests methods for the analytes for which effluent limitations and pretreatment standards are proposed. Although the Agency initiated data collection for these effluent guidelines many years prior to enactment of the NTTAA, traditionally, analytical test method development has been analogous to the Act's requirements for consideration and use of voluntary consensus standards.

The proposed rule would require dischargers to monitor for TSS, pH, arsenic, cadmium, chromium, copper, lead, mercury, silver, titanium, and zinc. Methods for monitoring these pollutants are specified in tables at 40 CFR Part 136. When available, methods published by voluntary consensus standards bodies are included in the list of approved methods in these tables. Specifically, voluntary consensus standards from the American Society for Testing and Materials (ASTM) are approved for pH, arsenic, cadmium, chromium, copper, lead, mercury, and zinc. Further, EPA has approved the use of voluntary consensus standards from the 18th edition of Standard Methods (published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation) for TSS, arsenic, cadmium, chromium, copper, lead, mercury, silver, titanium, and zinc. In addition, EPA's regulation authorizes the use of USGS methods for TSS, pH, arsenic, cadmium, chromium, copper, lead, mercury, silver, and zinc.

EPA requests comments on the discussion of NTTAA, on the consideration of various voluntary consensus standards, and on the existence of other voluntary consensus standards that EPA may not have found.

IX. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the **FOR FURTHER INFORMATION** section at the beginning of today's document for technical contracts at EPA.

B. Specific Data and Comment Solicitations

EPA has solicited comments and data on many individual topics throughout this preamble. The Agency incorporates each and every such solicitation here, and reiterates its interest in receiving data and comments on the issues addressed by those solicitations. EPA particularly requests comments and data on the following issues:

1. Exclusion of Captive and Intracompany Facilities From the Scope the Regulation

Most facilities which only burn waste from off-site facilities under the same corporate structure (intracompany facility) and/or only burn waste generated on-site (captive facility) are already subject to national effluent guidelines based on the manufacturing operations at the facility. Specifically, 107 of the 156 captive and intracompany facilities which received a screener survey and generated wastewater as a result of their combustion operations either completed a questionnaire for an effluent guidelines regulation or stated that they were subject to effluent guidelines. Three of these 156 facilities identified themselves as zero dischargers. Finally, only 46 of these 156 facilities did not identify an effluent guideline for their discharge. Of these facilities, it is likely that some are zero dischargers and some are already subject to effluent guidelines, although the respondent was unaware of that fact. In addition, 83 percent of all captive facilities and 73 percent of all intracompany facilities reported that the combustion unit wastewaters made up less than 20 percent of the final wastewater stream discharged from the facility. The Agency is requesting comment on not including captive and intracompany facilities in today's proposed rule as well as any additional data on the treatment of IWC wastewater at such operations. This would include information demonstrating that the IWC wastewater is commingled for treatment and subject to effluent limitations or pretreatment standards under regulations for other point source categories.

As described above, today's proposal would apply to all commercial IWC's and not to so-called ''captive'' and ''intra-company'' combustors—combustors that burn wastes either generated on-site or received from off-site facilities that are owned in common with the combustor. So long as these combustors do not burn wastes received from off-site from facilities that are not subject to common ownership, the effluent generated from the treatment of IWC wastewater at such combustors would not be subject to the proposal. Essentially, as explained above, EPA has concluded that such wastewater is generally commingled for treatment with wastewater generated in the primary industrial process at the site and subject to effluent limitations and standards for that industrial category. However, EPA recognizes that there may be circumstances in which this is not the case. For example, there may be stand-alone combustors burning wastes received from facilities under common ownership without other, on-site industrial operations. Further, even

where a combustor is operated in conjunction with on-site industrial activities, the IWC wastewater may be treated and discharged separately from that generated in other operations (or treated separately and mixed before discharge). Under these conditions, EPA is not certain that the wastewater should, in fact, be treated differently from that of commercial IWC wastewater. EPA specifically solicits comments and data on whether or not to include such facilities within the scope of the final rule. Following proposal, EPA will be collecting further data on such facilities.

2. *De Minimis* Level for Scope of Regulation

The Agency solicits comment on including an exclusion from the scope of this regulation for industrial waste combustors located at manufacturing facilities that accept a *de minimis* quantity of waste from other facilities not within the same corporate umbrella due to possible management practices at manufacturing facilities. Manufacturers may receive small quantities of waste from off-site to burn due to a site's ability to handle the waste properly in comparison to the site at which the waste is generated. Information collected from the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire was not designed to collect this information due to the method of creating the mailing list. EPA solicits additional data to determine if a *de minimis* level should be established and information on the appropriate level.

3. Subcategorization of Industrial Waste Combustors

Based on analysis of the Industrial Waste Combustor Industry, EPA has determined that it should not further subcategorize the Industrial Waste Combustors. EPA invites comment on whether the Industrial Waste Combustors should be divided into subcategories, including the basis of the subcategorization. Specifically, the Agency is requesting comments on whether it is necessary to subcategorize the industry based on the types of wastewater generated at an Industrial Waste Combustor facility.

4. Methodology for Estimating Current Performance

The Agency is soliciting comments on the approaches used to calculate the current performance as well as requesting any monitoring data available before the addition of non-contaminated stormwater or other industrial wastewater.

Many facilities in the Industrial Waste Combustor Industry commingle waste receipts from off-site with other on-site generated wastewater, such as non-contaminated stormwater and other industrial wastewater, prior to discharging. This mixing of waste may occur prior to or after treatment of the waste receipts. Because the commingling occurs prior to the discharge point, monitoring data collected by facilities at the discharge point cannot be used to estimate the current treatment performance of certain wastewater treatment operations. Under the approach EPA is proposing, in the case of the introduction of stormwater after treatment but before discharge, the allowable discharges from such a facility would be based on the guideline limitations and standards before the introduction of the stormwater. In the case of the stormwater or other wastes introduced *before* treatment, as discussed previously, the EPA used several methods to estimate current industry performance. EPA solicits comment on the methodologies used to estimate current discharge performance. EPA also requests discharge monitoring data from facilities prior to commingling the Industrial Waste Combustor wastewater with other sources of wastewater. These data will be used to assess current discharge performance and to statistically analyze the autocorrelation of concentrations measured on consecutive days (See Section VI.G. for an explanation of autocorrelation). Before submitting discharge monitoring data, please contact Samantha Hopkins at (202) 260–7149 to ensure that the data include information to support its use for calculating current performance and possible limitations.

5. Additional Technologies for the Control of Wastes Containing a Large Variety of Metal in Continually Changing Concentrations

The BPT effluent limitations and standards for the control of metals is based on the use of two stages of chemical precipitation and sand filtration. An additional treatment technology was sampled in the process of developing the proposed regulation. Performance by this treatment technology was adequate for the metals found in the wastewater at treatable levels. The additional treatment technology sampled is proprietary information. EPA solicits information on additional treatment technologies applicable to the treatment of wastes containing a large variety of metal in continually changing concentrations that are commercially available.

6. Options Selection

EPA is asking for comment on whether it should adopt Option B as PSES for this subcategory, given that annual costs are very close to Option A. Additional information is provided in the EA. Option A is: Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, and Solid-Liquid Separation.

Option B is: Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, Solid-Liquid Separation, and Sand Filtration.

7. Costing Methodology

The only facilities given no cost for compliance were facilities with the treatment-in-place prescribed for that option. The Agency believes that this approach overestimates the costs to achieve the proposed BPT because many facilities can achieve BPT level discharges without using all of the components of the technology basis described in Section VI.E. The Agency solicits comments on these costing assumptions. Table VII.A–1 summarizes the capital expenditures and annual O&M costs for implementing BPT. The capital expenditures for the process change component of BPT are estimated to be $5.924 million with annual O&M costs of $1.085 million for Regulatory Option B.

8. Estimation of Industry Size

From the information obtained from the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, EPA estimated that there are 84 facilities in the Industrial Waste Combustor Industry. However, only 11 of these facilities are currently operating and discharging Industrial Waste Combustor wastewater to a POTW or water body. EPA's estimation of the industry size is based on data provided from questionnaire mailed to facilities that EPA identified using information available in 1992. As stated earlier, facilities names were gathered from various sources, and no listing of non-hazardous waste combustion units was available. Therefore, there may have been Industrial Waste Combustor facilities not included on the questionnaire mailing list. EPA solicits information on the number, name, and location of facilities within the industry.

9. Treatment of Incidental Organic Pollutants Detected in the Industrial Waste Combustor Industry

During the EPA sampling program, EPA collected analytical data on the presence of organic pollutants in the Industrial Waste Combustor wastewater.

Various organic pollutants were detected at low concentrations in the untreated Industrial Waste Combustor wastewater. EPA sampled treatment technologies to control the discharge of inorganic pollutants for Industrial Waste Combustors. In most circumstances, the organic pollutants detected at low concentrations in the treatment facility influent were found at non-detectable levels prior to any treatment for the organic pollutants. Because the initial concentrations of organic pollutants were very low, the effect of the addition of treatment chemicals and other sources of wastewater is to cause the concentrations to become lower and thereby non-detectable. EPA solicits comment on the necessity of control on low level organic pollutants for the Industrial Waste Combustors and technologies appropriate for the control of low level organics as well as analytical data to characterize the performance of such treatment technologies.

10. Concentration Limitations vs. Production-based Limitations

EPA is requesting comments on the decision to use concentration limitations as opposed to production-based limitations. EPA based the decision on the fact that Industrial Waste Combustors do not make a product. However, the limitations could potentially be based upon how much waste is burned rather than product generation. EPA sees the concentration limitations as a potential problem in that facilities could generate more process water to comply with the limitations rather than treating the process water sufficiently. For example, a facility could increase the volume of scrubber water by decreasing the amount of scrubber water that is recycled for reuse. EPA is requesting comments on this issue.

11. Zero-discharge Standards for BPT/BAT and NSPS

EPA is specifically considering whether it should adopt BPT/BAT and NSPS of zero discharge, since so many facilities are currently not generating or not discharging any wastewater as a result of their Industrial Waste Combustor operations (see section IV.A. of today's notice). Zero discharge is primarily accomplished through the use of dry scrubbing operations or through off-site disposal of Industrial Waste Combustor wastewater. EPA evaluated the cost for facilities to dispose of their Industrial Waste Combustor wastewater off-site and found it was less expensive than on-site treatment of the wastewater for only 3 of the eleven facilities. EPA also evaluated the cost for facilities to burn the Industrial Waste Combustor wastewater streams they generated and found that it was significantly more costly than wastewater treatment. EPA did not evaluate the cost for all facilities to replace their wet scrubbing systems with dry scrubbing systems, as the wet scrubbing systems have been established as the best performers (according to the Hazardous Waste Combustion proposed regulation) for removing acid gages and dioxins from effluent gas streams. Also, dry scrubbing systems have an adverse affect of generating an unstable solid to be disposed of in a landfill, as opposed to the stable solids generated by wastewater treatment of air pollution control wastewater. EPA also did not evaluate the cost for all facilities to recycle their Industrial Waste Combustor wastewater, as EPA discovered that only certain types of air pollution control systems working in conjunction with one another are able to accomplish total recycle of wastewater. Thus, new air pollution control systems would have to be costed for all facilities along with recycling systems. Overall, zero discharge at BPT/BAT or NSPS is not being proposed because EPA believes that the cost to facilities of changing current air pollution control systems are probably too high for BPT/BAT and because the change may cause unacceptable non-water quality impacts. EPA is requesting comments on its decision not to propose zero discharge for BPT/BAT and/or NSPS.

X. Regulatory Implementation

A. Applicability

While today's proposal represents EPA's best judgment a this time, the promulgated effluent limitations and standards may change based on additional information or data submitted by commenters or developed by the Agency. Consequently, the permit writer may consider the proposed limits and data provided in the Technical Support Document in developing permit limits. Although the information provided in the Development Document may provide useful information and guidance to permit writers in determining best professional judgment permit limits, the permit writer will still need to justify any permit limits based on the conditions at the individual facility until EPA promulgates final limitations.

B. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of waste streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n).

C. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect discharges. However, the statute provides for the modification of these requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitations or standards applicable to the individual facility. Such a modification is known as a ''fundamentally different factors'' (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court (*Chemical Manufacturers Ass'n* v. *NRDC.* 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based

solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be not less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR Part 125 Subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance request for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g, volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect discharger at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for indirect discharges.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulations incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS

2. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain nonconventional pollutants due to localized environmental factors. These pollutants include ammonia, chlorine, color, iron, and total phenols.

3. Permit Modifications

Evens after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request that a permit modification be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modifications that results in less stringent conditions is treated as a major modifications, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modifications are described in 40 CFR 122.63.

4. Removal credits

The CWA establishes a discretionary program for POTWs to grant ''removal credits'' to their indirect dischargers. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW. *See* 40 CFR 403.7. EPA has promulgated removal credit regulations as part of its pretreatment regulations. Under EPA's pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits maybe available for three metals. When these sewage sludge is incinerated, removal credits maybe available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of EPA's removal credit regulations,[2] following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium,

[2] Under Section 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(i), (ii), and (iii).

chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with Section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to the Part 403 regulations (58 FR 9382–83), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA have established a numerical pollutant limit in Part 503, or (2) which EPA has determined will not threaten human health and the environment when used or disposed of in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

Consequently, in the case of a pollutant for which EPA did not perform a risk assessment in developing its Round One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[3]

[3] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (*see* Appendix G to Part 403) did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutant in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

EPA has concluded that a POTW discharge of a particular pollutant will not prevent sewage sludge use (or disposal) so long as the POTW is complying with EPA's part 503 regulations and so long as the POTW demonstrates that use or disposal of sewage sludge containing that pollutant will not adversely affect public health and environment. Thus, if the POTW meets these two conditions, a POTW may obtain removal credit authority for pollutants other than those specifically regulated in the part 503 regulations. What is necessary for a POTW to demonstrate that a pollutant will not adversely affect public health and the environment will depend on the particular pollutant, the use or disposal means employed by the POTW and the concentration of the pollutant in the sewage sludge. Thus, depending on the circumstances, this effort could vary from a complete 14-pathway risk assessment modeling exercise to a simple demonstration that available scientific data show that, at the levels observed in the sewage sludge, the pollutant at issue is not harmful. As part of its initiative to simplify and improve its regulations, at the present time, EPA is considering whether to propose changes to its pretreatment regulations so as to provide for case-by-case removal credit determinations by the POTWs' permitting authority.

EPA has already begun the process of evaluating several pollutants for adverse potential to human health and the environment when present in sewage sludge. In November 1995, pursuant to the terms of the consent decree in the *Gearhart* case, the Agency notified the United States District Court for the District of Oregon that, based on the information when available at that time, it intended to propose only two pollutants for regulation in the Round Two sewage sludge regulations dioxins/dibenzofurans (all monochloro to octochloro congeners) and polychlorinated biphenyls.

The Round Two sludge regulations are not scheduled for proposal until December 1999 and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could propose that removal credits should be authorized for identified pollutants before promulgation of the Round Two sewage sludge regulations. However, given the Agency's commitment to promulgation of effluent limitations and guidelines under court-supervised deadlines, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these guidelines and standards.

5. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by the EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations and standards for today's proposed rule to cover the discharge of pollutants for this industrial subcategory. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this proposed regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

For determination of effluent limits where there are multiple categories and subcategories, the effluent guidelines are applied using a flow-weighted combination of the appropriate guideline for each category or subcategory. Where a facility treats an Industrial Waste Combustor waste stream and process wastewater from other industrial operations, the effluent guidelines would be applied by using a flow-weighted combination of the BPT/BAT/PSES limit for the Industrial Waste Combustors and the other industrial operations to derive the appropriate limitations. However, as stated above, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations regardless of the limitation derived using the flow-weighted combinations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to assure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to

the extent consistent with EPA's regulations.

Appendix 1—Definitions, Acronyms, and Abbreviations

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, as described in Sec. 304(b)(2) of the CWA.

BCT—The best conventional pollutant control technology, as described in Sec. 304(b)(4) of the CWA.

BOD_5—Biochemical oxygen demand, Five Day. A measure of biochemical decomposition of organic matter in a water sample. It is determined by measuring the dissolved oxygen consumed by microorganisms to oxidize the organic contaminants in a water sample under standard laboratory conditions of five days and 70 °C. BOD_5 is not related to the oxygen requirements in chemical combustion.

Boiler—An enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section 260.32.

BPT—The best practicable control technology currently available, as described in Sec. 304(b)(1) of the CWA.

Captive—Used to describe a facility that only accepts waste generated on site and/or by the owner operator at the facility.

Centralized waste treatment facility—Any facility that treats any hazardous or non-hazardous industrial wastes received from off-site by tanker truck, trailer/roll-off bins, drums, barge, pipeline, or other forms of shipment. A ''centralized waste treatment facility'' includes (1) a facility that treats waste received from off-site exclusively and (2) a facility that treats wastes generated on-site as well as waste received from off-site.

Clarification—A treatment designed to remove suspended materials from wastewater—typically by sedimentation.

Clean Water Act (CWA)—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended, inter alia, by the Clean Water Act of 1977 (Public Law 95–217) and the Water Quality Act of 1987 (Public Law 100–4).

Closed—A facility or portion thereof that is currently not receiving or accepting wastes and has undergone final closure.

Combustion unit—A device for waste treatment which uses elevated temperatures as the primary means to change the chemical, physical, biological character or composition of the waste. Examples of combustion units are incinerators, fuel processors, boilers, industrial furnaces, and kilns.

Commercial facility—Facilities that accept waste from off-site for treatment from facilities not under the same ownership as their facility. Commercial operations are usually made available for a fee or other remuneration. Commercial waste treatment does not have to be the primary activity at a facility for an operation or unit to be considered ''commercial.''

Conventional pollutants—The pollutants identified in Sec. 304(a)(4) of the CWA and the regulations thereunder (biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, fecal coliform, and pH).

Direct discharger—A facility that discharges or may discharge treated or untreated pollutants into waters of the United States.

Disposal—Intentional placement of waste or waste treatment residual into or on any land where the material will remain after closure. Waste or residual placed into any water is not defined as disposal, but as discharge.

EA—Economic Analysis

Effluent—Wastewater discharges.

Effluent limitation—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b).)

EPA—The U.S. Environmental Protection Agency.

Facility—A facility is all contiguous property owned, operated, leased or under the control of the same person. The contiguous property may be divided by public or private right-of-way.

Fuel Blending—The process of mixing organic waste for the purpose of generating a fuel for reuse.

Hazardous Waste—Any waste, including wastewaters defined as hazardous under RCRA, Toxic Substances Control Act (TSCA), or any state law.

Incinerator—means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

Indirect discharger—A facility that discharges or may discharge pollutants into a publicly-owned treatment works.

Industrial Furnace—means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns
(2) Lime kilns
(3) Aggregate kilns
(4) Phosphate kilns
(5) Coke ovens
(6) Blast furnaces
(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
(8) Titanium dioxide chloride process oxidation reactors
(9) Methane reforming furnaces
(10) Pulping liquor recovery furnaces
(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3 percent, the acid product is used in a manufacturing process, and except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20 percent as generated.
(13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and,

(vi) Other factors, as appropriate.

Industrial Waste—Hazardous or non-hazardous waste generated from industrial operation. This definition excludes refuse and infectious wastes.

Industrial Waste Combustor facility—Any thermal unit that burns any hazardous or non-hazardous industrial wastes received from off-site from facilities not under their same corporate structure or subject to the same ownership. This term includes the following: a facility that burns waste received from off-site exclusively as well as a facility that burns wastes generated on-site and waste received from off-site. Examples of a commercial industrial waste combustor facility include: rotary kiln incinerators, cement kilns, aggregate kilns, boilers, etc.

Industrial Waste Combustor wastewater—Water used in air pollution control systems of industrial waste combustion operations or water used to quench flue gas or slag generated as a result of industrial waste combustion operations.

Intracompany—A facility that treats, disposes, or recycles/recovers wastes generated by off-site facilities under the same corporate ownership. The facility may also treat on-site generated wastes. If any waste from other facilities not under the same corporate ownership is accepted for a fee or other remunerations, the facility is considered commercial.

LTA—Long-term average. For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in today's proposed regulation.

Minimum level—The level at which an analytical system gives recognizable signals and an acceptable calibration point.

Municipal Facility—A facility which is owned or operated by a municipal, county, or regional government.

New Source—''New source'' is defined at 40 CFR 122.2 and 122.29 for direct discharging facilities and at 40 CFR 403.3 for facilities discharging to a POTW.

Non-commercial facility—Facilities that accept waste from off-site for treatment only from facilities under the same ownership as their facility.

Non-conventional pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR Part 401.

Non-detect value—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

Non-hazardous waste—All waste not defined as hazardous under federal or state law.

Non-water quality environmental impact—An environmental impact of a control or treatment technology, other than to surface waters.

NPDES—The Natural Pollutant Discharge Elimination System authorized under Sec. 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NSPS—New Source Performance Standards.

OCPSF—Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing Effluent Guideline (40 CFR Part 414).

Off-Site—''Off-site'' means outside the boundaries of a facility.

On-site—''On-site'' means within the boundaries of a facility.

Outfall—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters or POTWs.

Point source category—A category of sources of water pollutants.

Pollutant (to water)—Dredged spoil, solid waste, incinerator residue, filter backwash sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, certain radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

POTW or POTWs—Publicly-owned treatment works, as defined at 40 CFR 403.3(o).

Pretreatment standard—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW. (CWA Section 307(b).)

Priority pollutants—The pollutants designated by EPA as priority in 40 CFR Part 423 Appendix A.

Process wastewater—''Process wastewater'' is defined at 40 CFR 122.2.

PSES—Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under Sec. 307(b) and (c) of the CWA.

RCRA—Resource Conventional and Recovery Act (Public Law 94–580) of 1976, as amended.

Residuals—The material remaining after a natural or technological process has taken place, e.g., the sludge remaining after initial wastewater treatment.

Sewage Sludge—Sludge generated by a sewage treatment plant or POTW.

SIC—Standard Industrial Classification (SIC). A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

Sludge—The accumulated solids separated from liquids during processing.

Small business—Businesses with annual sales revenues less than $6 million. This is the Small Business Administration definition of small business for SIC code 4953, Refuse Systems (13 CFR Ch.I, § 121.601).

Solidification—The addition of agents to convert liquid or semi-liquid hazardous waste to a solid before burial to reduce the leaching of the waste material and the possible migration of the waste or its constituents from the facility. The process is usually accompanied by stabilization.

Solids—For the purpose of this notice, a waste that has a very low moisture content, is not free-flowing, and does not release free liquids. This definition deals with the physical state of the waste, not the RCRA definition.

Stabilization—A hazardous waste process that decreases the mobility of waste constituents by means other than solidification. Stabilization techniques include mixing the waste with sorbents such as fly ash to remove free liquids. For the purpose of this rule, chemical precipitation is not a technique for stabilization.

Treatment—Any activity designed to change the character or composition of any waste so as to prepare it for transportation, storage, or disposal; render it amenable for recycling or recovery; or reduce it in volume.

TSS—Total Suspended Solids. A measure of the amount of particulate matter that is suspended in a water sample. The measure is obtained by filtering a water sample of known volume. The particulate material retained on the filter is then dried and weighed.

Waste Receipt—Wastes received for treatment or recovery.

Wastewater treatment system—A facility, including contiguous land and structures, used to receive and treat wastewater. The discharge of a pollutant from such a facility is subject to regulation under the Clean Water Act.

Waters of the United States—See 40 CFR 122.2.

Zero discharge—No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition are ''alternative'' discharge of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application.

List of Subjects in 40 CFR Part 444

Environmental protection, Hazardous waste, Incineration, Waste treatment and disposal, Water pollution control.

Dated: November 26, 1997.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR part 444 is proposed to be added to read as follows:

PART 444—WASTE COMBUSTORS POINT SOURCE CATEGORY

Subpart A—Industrial Waste Combustor Subcategory

General Provisions

Sec.

Limitations and Standards for Existing Industrial Waste Combustor Facilities

Limitations and Standards for New Industrial Waste Combustor Facilities

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, and 1361.

Subpart A—Industrial Waste Combustor Subcategory

General Provisions

§ 444.1 Definitions.

EPA's regulations in this part may use words and phrases that are unfamiliar to you. To help you understand its regulations in this part, EPA has defined some of these. You should look at 40 CFR parts 122 and 401 when reading the regulations in this part. In addition to the definitions in 40 CFR parts 122 and 401, the following definitions apply specifically to this part:

Conventional pollutants. Section 304 of the CWA requires EPA to identify conventional pollutants and how much effluent reduction may be obtained through use of best conventional control technology for categories of dischargers. EPA has identified the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, pH, and fecal coliform.

Facility means all contiguous property owned, operated, leased or under the control of the same person or entity. The contiguous property may be divided by public or private right-of-way.

Industrial waste means hazardous or non-hazardous waste generated from industrial operations. Refuse and infectious wastes are not industrial waste.

Industrial Waste Combustor facility means any thermal unit that burns any hazardous or non-hazardous industrial wastes received from off-site from facilities not under their same corporate structure or subject to the same ownership. This term includes the following: a facility that burns waste received from off-site exclusively as well as a facility that burns wastes generated on-site and waste received from off-site. Examples of a commercial industrial waste combustor facility include: rotary kiln incinerators, cement kilns, lime kilns, aggregate kilns, and boilers.

Industrial Waste Combustor wastewater means water used in air pollution control systems of industrial waste combustion operations or water used to quench flue gas or slag generated as a result of industrial waste combustion operations.

Non-conventional pollutants means pollutants that are neither conventional pollutants nor priority pollutants.

Off-site means outside the boundaries of a facility.

On-site means within the boundaries of a facility.

POTW. Publicly-owned treatment works as defined at 40 CFR 403.3(o).

Priority pollutants means the pollutants designated by EPA as priority in 40 CFR part 423, Appendix A.

You means the owner or operator of a commercial industrial waste combustor facility.

§ 444.2 Scope of this part.

(a) Subchapter N of title 40 of the Code of Federal Register contains EPA's CWA effluent guidelines and standards regulations. The provisions of this part apply only to the discharge of Industrial Waste Combustor wastewater. The discharge of other wastewater may be subject to other applicable provisions of this subchapter N.

(b) The provisions of this part apply to you if:

(1) You operate a commercial, Industrial Waste Combustor facility that receives industrial waste from off-site for burning; and

(2) You discharge Industrial Waste Combustor wastewater.

(c) The provisions of this part do not apply to you if you operate an Industrial Waste Combustor facility that only burns wastes that are generated exclusively on-site and/or burns wastes received exclusively from off-site from other facilities that are under the same corporate ownership.

§ 444.3 Monitoring requirements for the Industrial Waste Combustors.

You must monitor to demonstrate compliance with the limitations or standards. Here are your monitoring requirements: The ''monthly average'' regulatory values are the basis for the monthly average effluent limitations in direct discharge permits and pretreatment standards. You must comply with the monthly average discharge limit regardless of the number of samples you average.

Limitations and Standards for Existing Industrial Waste Combustor Facilities

§ 444.10 Proposed effluent limitations for existing Industrial Waste Combustor facilities that discharge Industrial Waste Combustor wastewater to navigable waters.

The provisions of this section apply to existing direct dischargers of Industrial Waste Combustor wastewater. If you discharge Industrial Waste Combustor wastewater, except as provided in 40 CFR 125.30 through 125.32, you must achieve the effluent limitations listed as follows:

(a) Effluent limitations attainable through the best practicable control technology currently available (BPT). The following table specifies the effluent limitations attainable through the best practicable control technology currently available (BPT):

BPT EFFLUENT LIMITATIONS (MG/L)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional Pollutants:		
TSS	24.3	7.46
pH	.....	(1)
Priority and Non-Conventional Pollutants:		
Arsenic	0.0166	0.0162
Cadmium	0.137	0.0493
Chromium	0.0205	0.013
Copper	0.0224	0.0131
Lead	0.0957	0.0606
Mercury	0.00409	0.00259
Silver	0.0102	0.00648
Titanium	0.0442	0.0159
Zinc	0.0532	0.0354

[1] Within the range 6.0 to 90. pH units.

(b) Effluent limitations attainable through the best conventional pollutant control technology (BCT). The BCT effluent limitations for the conventional pollutants, TSS and pH, are the same as those specified in the table in paragraph (a) of this section.

(c) Effluent limitations attainable through the best available technology economically achievable (BAT). The BAT effluent limitations are the same as those specified for BPT for the priority and non-conventional pollutants in the table in paragraph (a) of this section.

§ 444.11 Proposed pretreatment standards for existing Industrial Waste Combuster facilities that introduce Industrial Waste Combustor wastewater into a POTW.

The provisions of this section apply to any existing Industrial Waste Combustor facility that introduces Industrial Waste Combustor wastewater into a publicly-owned treatment works (POTW). Except as provided in 40 CFR 403.7 and 403.13, any existing Industrial Waste Combustor facility subject to this part must comply with 40 CFR part 403 and the following pretreatment standards for existing sources (PSES):

PRETREATMENT STANDARDS (MG/L)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Priority and Non-Conventional Pollutants:		
Arsenic	0.0323	0.0172
Cadmium	0.484	0.160
Chromium	0.0203	0.013
Copper	0.0684	0.0322
Lead	0.0968	0.062
Mercury	0.00536	0.00343
Silver	0.0193	0.0123
Titanium	0.0131	0.00614
Zinc	0.248	0.159

Limitations and Standards for New Industrial Waste Combustor Facilities

§ 444.20 Proposed effluent limitations for new Industrial Waste Combustor facilities that will discharge Industrial Waste Combustor wastewater directly into navigable waters.

Any Industrial Waste Combustor facilities subject to this part that is a new source must comply with new source performance standards (NSPS). NSPS is the same as specified in the table in § 444.10(a).

§ 444.21 Proposed pretreatment standards for new Industrial Waste Combustor facilities that will introduce Industrial Waste Combustor Wastewater into a POTW .

The provisions of this section apply to any industrial Waste Combustor facility subject to this part that is a new source and introduces pollutants into a publicly-owned treatment works. Except as provided in 40 CFR 403.7, any new industrial Waste Combustor source must comply with 40 CFR part 403 and achieve the pretreatment standards for new sources (PSNS). PSNS is the same as specified in the table in § 444.11.

[FR Doc. 98–3086 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

Friday
February 6, 1998

Part VI

Environmental Protection Agency

40 CFR Part 445

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 445

RIN 2040–AC23

[FRL—5931–5]

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal represents the Agency's first effort to develop Clean Water Act (CWA) national effluent limitations guidelines and pretreatment standards for wastewater discharges from stand-alone landfills unassociated with other industrial or commercial activities.

The proposed regulation would establish technology-based effluent limitations for wastewater discharges to navigable waters associated with the operation of new and existing hazardous and non-hazardous landfill facilities regulated under Subtitle C or Subtitle D of the Resource Conservation and Recovery Act (RCRA). The proposal would also establish pretreatment standards for the introduction of pollutants into Publicly Owned Treatment Works (POTW) associated with the operation of new and existing hazardous landfills regulated under Subtitle C of RCRA. Sources of landfill wastewater at these facilities include, but are not limited to, landfill leachate and gas collection condensate.

The proposal would not establish pretreatment standards for the introduction of pollutants into Publicly Owned Treatment Works (POTW) associated with the operation of new and existing non-hazardous landfills regulated under Subtitle D of RCRA.

The proposal would not apply to wastewater discharges from captive landfills located at industrial facilities that commingle landfill process wastewater with non-landfill process wastewater for treatment, provided that the landfill receives only waste generated on-site or waste generated from a similar activity at another facility under the same corporate structure. Further, the proposed regulation would also not apply to wastewater discharges associated with treatment of contaminated groundwater from hazardous and non-hazardous landfills.

Compliance with this proposed regulation is estimated to reduce the discharge of pollutants by at least 800,000 pounds per year and to cost an estimated $ 7.71 million annualized (1996 dollars, post-tax for non-government facilities).

DATES: Comments on the proposal must be received by May 7, 1998.

In addition, EPA will conduct a workshop and public hearing on the pretreatment standards of the rule. The meeting will be held on February 24, 1998, from 10:00 am to 2:00 pm.

ADDRESSES: Send written comments and supporting data on this proposal to: Michael Ebner, US EPA, (4303), 401 M Street S.W., Washington, D.C. 20460. Please submit an original and two copies of your comments and enclosures (including references).

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in WordPerfect format or ASCII file format.

Comments may also be filed electronically to ''Ebner.Michael@epamail.epa.gov''. Electronic comments must be submitted as an ASCII or Wordperfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–17 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

The public record is available for review in the EPA Water Docket, 401 M Street S.W., Washington, D.C. 20460. The record for this rulemaking has been established under docket number W–97–17, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

The workshop and public hearing covering the rulemaking will be held at the EPA headquarters auditorium, Waterfront Mall, 401 M St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Mr. Michael Ebner at (202) 260–5397. For additional economic information contact Mr. William Anderson at (202) 260–5131.

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewaters and are not located at other industrial or commercial facilities.
State, municipal or tribal Government.	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewaters and are not located at other industrial or commercial facilities.
Federal Government	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewaters and are not located at other industrial or commercial facilities.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 445.02 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

The regulations proposed today are supported by several major documents:

1. ''Development Document for Proposed Effluent Limitations

Guidelines and Standards for the Landfills Category'' (EPA 821–R–97–022). Hereafter referred to as the Technical Development Document, presents EPA's technical conclusions concerning the proposal. EPA describes, among other things, the data collection activities in support of the proposal, the wastewater treatment technology options, wastewater characterization, and the estimation of costs to the industry.

2. ''Economic and Cost-Effectiveness Analysis for Proposed Effluent Limitations Guidelines and Standards for the Landfills Category'' (EPA 821–B–97–005).

3. ''Statistical Support Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Category'' (EPA 821–B–97–006).

4. ''Environmental Assessment for Proposed Effluent Limitations Guidelines and Standards for the Landfills Category'' (EPA 821–B–97–007).

How To Obtain Supporting Documents

The Technical and Economic Development Documents can be obtained through EPA's Home Page on the Internet, located at www.EPA.gov/OST/rules. The documents are also available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW, Washington, D.C. 20460; telephone (202) 260–7786 for the voice mail publication request.

Table of Contents

I. Legal Authority

These regulations are proposed under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

II. Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (''NPDES'') permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

In the guidelines for an industry category, EPA defines BPT effluent limits for conventional, priority,[1] and

[1] In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the ''classical'' pollutants (e.g., TSS, pH, BOD_5). However, nothing on the face of the statute explicitly restricted BPT limitation to

Continued

non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers: the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristic. Where, however, existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

3. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors. Unlike BPT limitations, BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may require a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Sec. 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere-with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere-with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards (''effluent guidelines'') and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Centralized Waste Treatment Industry.

The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of Section 304(m) and other statutory authorities requiring promulgation of effluent guidelines (*NRDC et al.* v. *Reilly*, Civ. No. 89–2980 (D.D.C.)). Under the terms of a consent decree dated January 31, 1992, which settled the litigation, EPA agreed, among other things, to propose effluent guidelines for the ''Landfills and Industrial Waste Combusters'' category [2] by December 1995 and take final action on these effluent guidelines by December 1997. On February 4, 1997, the court approved modifications to the Decree which revise the deadlines to November 1997 for proposal and November 1999 for final action. EPA provided notice of these modifications on February 26, 1997, at 62 FR 8726. Although the Consent Decree lists ''Landfills and Industrial Waste Combusters'' as a single entry, EPA is publishing separate rulemaking

such pollutants. Following passage of the Clean Water Act of 1977 with its requirement for points sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to address the listed priority pollutants under the guidelines program. BPT guidelines continue to include limitations to address all pollutants.

[2] In the 1990 304(m) plan and the 1992 Decree, the category name was ''Hazardous Waste Treatment, Phase II'', subsequently renamed as ''Landfills and Industrial Waste Combusters.''

proposals for Industrial Waste Combusters and for Landfills.

III. Scope of the Proposed Regulation

EPA is today proposing effluent limitations guidelines and pretreatment standards for wastewater discharges associated only with the operation and maintenance of landfills regulated under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA).[3] EPA's proposal would not apply to wastewater discharges associated with the operation and maintenance of land application or treatment units, surface impoundments, underground injection wells, waste piles, salt dome or bed formations, underground mines, caves or corrective action units.[4] Additionally, this guideline would not apply to waste transfer stations, or any wastewater not directly attributed to the operation and maintenance of Subtitle C or Subtitle D landfill units. Consequently, wastewaters such as those generated in off-site washing of vehicles used in landfill operations are not within the scope of this guideline.

The wastewater flows which are covered by the rule include leachate, gas collection condensate, drained free liquids, laboratory-derived wastewater, contaminated storm water and contact washwater from truck exteriors and surface areas which have come in direct contact with solid waste at the landfill facility. Groundwater, however, which has been contaminated by a landfill and is collected, treated, and discharged is excluded from this guideline. A discussion of the exclusion for contaminated groundwater flows is included in Section [VIII] of this notice. A description of sources of wastewater in the landfills category is also provided in Section [VIII].

EPA initially considered development of effluent guidelines to address any landfill discharging directly to the surface waters of the United States or introducing pollutants into a POTW. Consequently, EPA's technical evaluation for the proposal included an assessment of all landfill facilities which collect wastewater as a result of landfilling operations. However, EPA has decided not to include within the scope of this proposal landfill facilities operated in conjunction with other industrial or commercial operations which only receive waste from off-site facilities under the same corporate structure (intra-company facility) and/or receive waste generated on-site (captive facility) so long as the wastewater is commingled for treatment with other non-landfill process wastewaters. A landfill which accepts off-site waste from a company not under the same ownership as the landfill would not be considered a captive or intracompany facility and would be subject to the Landfills category effluent guideline when promulgated.

EPA has decided not to include these facilities within the scope of this proposed regulation for the following reasons.

First, EPA has preliminarily concluded that the wastewater generated by landfill operations at most of the captive and intracompany facilities are already subject to categorical effluent limitations (or pretreatment standards). The evidence EPA has reviewed to date supports the conclusion that these wastewater flows were either assessed and evaluated for the effluent limitations guideline applicable to the facility, or are the subject of Best Professional Judgment (BPJ) or Combined Wastestream Formula limits established by the permit writer or Control Authority.

The second reason EPA believes that it should exclude such landfills from this guideline is because landfill wastewaters at captive and intracompany landfills represent a very small portion of the wastewater flows treated at their wastewater treatment facilities (often less than one percent and typically less than three percent). In these circumstances, so long as the facilities combine the relatively small quantities of landfill wastewater with their other industrial process wastewater for treatment, there is little likelihood that the pollutants of concern in the landfill leachate will escape treatment. An additional factor lends intuitive support to this conclusion. It is likely that leachate from on-site landfills at industrial operations will reflect a pollutant profile similar to the facility's industrial process wastewater. EPA believes that landfill wastewaters generated at such facilities have a similar pollutant profile to the wastewater generated in the industrial operation. For example, the leachate from a landfill at a facility subject to the Petroleum Refining guideline will tend to be characterized by high organic loads, while the leachate from a facility regulated under the Nonferrous Metals guideline will be characterized by metal loadings. Consequently, based on the information EPA has reviewed to date, the Agency believes that the wastewater treatment currently in place at such industrial facilities is likely to treat the majority of the pollutants found in leachate at that facility. However, the Agency has only limited information on leachate quality at landfills associated with industrial operations. Accordingly, EPA requests additional data and solicits comments and data regarding its conclusion that landfill leachate at such facilities is likely to be treated effectively in the industrial wastewater treatment system and that additional effluent guidelines and categorical pretreatment standards are not necessary.

A third reason supporting exclusion of such facilities from this guideline is EPA's conclusion that the pollutants in on-site landfill wastewaters are receiving adequate treatment that is at least equivalent to that proposed here. EPA has compared the wastewater treatment technologies employed at these facilities to the treatment technologies being proposed for BPT/BAT and PSES for independently, commercially or municipally operated Subtitle C and D landfills. This assessment suggests that, in most cases, treatment for regulated pollutants being achieved at such facilities is comparable to those being proposed here.

Finally, EPA has also reviewed individual NPDES permits for captive and intracompany facilities to verify its preliminary conclusion that it may exclude such facilities from the scope of this regulation without jeopardizing receiving waters. The Agency has identified no captive or intracompany landfills that are not commingling the landfill wastewater for treatment with other wastewater at the facility. This review indicates that, for the most part, these landfill wastestreams are mixed with categorical wastes for treatment and subject to limitations comparable to those being considered here. Given these facts, EPA has concluded preliminarily that it should not include such captive or intracompany facilities within the scope of today's proposed action. However, EPA is requesting comment on its approach.[5] The Agency is particularly eager for data concerning

[3] EPA's Subtitle C and Subtitle D regulations define ''landfill''. *See* 40 CFR 257.2, 258.2 (''municipal solid waste landfill'') and 260.10. Permitted subtitle C landfills are authorized to accept hazardous wastes as defined in 40 CFR Part 261. Subtitle D landfills are authorized to receive municipal, commercial or industrial waste that is not hazardous (or is hazardous waste excluded from regulation under Subtitle C). Details of the RCRA regulatory requirements are provided below at Section [IV] .

[4] These terms are defined at 40 CFR 257.2 and 260.10.

[5] EPA acknowledges that its conclusions are tentative and not without uncertainty. A number of the facility operators identified themselves as subject to multiple categories. EPA applied its best judgment in many circumstances to determining the probable handling of the landfill waste streams. EPA is specifically soliciting data and other information on this issue.

treatment of such wastestreams at categorical and other facilities.

Based on its survey for this guideline, EPA identified over 200 captive and intracompany facilities with on-site landfills. A majority of these landfills are found at industrial facilities that are or will be subject to three effluent guidelines: Pulp and Paper (40 CFR Part 430), Centralized Waste Treatment (proposed 40 CFR Part 437, 60 FR 5464, January 27, 1995), or Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) (40 CFR Part 414). In addition, EPA identified approximately 30 landfills subject to one or more of the following categories: Nonferrous Metals Manufacturing (40 CFR Part 421), Petroleum Refining (40 CFR Part 419), Timber Products Processing (40 CFR Part 429), Iron and Steel Manufacturing (40 CFR Part 420), Transportation Equipment Cleaning (new category to be proposed in 1998), and Pesticide Manufacturing (40 CFR Part 455). EPA did not, however, specifically consider the flows associated with this landfill leachate in the development of these guidelines.

Industry supplied data estimates that there are over 118 Pulp and Paper facilities with on-site landfills and that over 90 percent commingle landfill leachate with process wastewater for treatment on-site. Treatment at these facilities generally involves secondary biological treatment. The wastewater flow originating from landfills typically represents less than one percent of the total flow through the facilities' wastewater treatment plant and in no case exceeds three percent of the treated flow. Additionally, approximately six percent of the pulp and paper mills send landfill generated wastewater to a POTW along with process wastewater.

Based on this information, EPA has preliminarily concluded that landfill-generated wastewater at pulp and paper mill facilities will typically receive biological treatment equivalent to that proposed today for stand-alone landfills and consequently should be excluded from the scope of this regulation. This conclusion is based on several factors. Because landfill leachate is a regulated flow under the current permitting guidelines, permit writers must develop limits for landfill wastewater exercising their Best Professional Judgment (BPJ). Given the small volumes of landfill generated wastewaters and the fact that the treatment in place for industrial wastewaters will adequately treat the constituents typically found in landfill leachate, EPA believes that BPJ limits are likely to adequately control these discharges.

Based on responses to the 1992 Waste Treatment Industry: Landfills Questionnaire, EPA estimates that there are more than 30 facilities subject to the Organic Chemicals, Plastics and Synthetic Fibers guideline with on-site landfills.[6] At OCPSF facilities with on-site landfills, landfill leachate typically represents less than one percent of the industrial flow at the facility, in no case exceeds six percent of the flow and is typically commingled with process wastewater for treatment. EPA specifically considered landfill leachate in the development of the OCPSF guideline, although it is not specifically identified as a regulated flow in the applicability section of the rule. The development document for the guidelines discusses landfill leachate as one of the ancillary flows often treated at OCPSF facilities. Further, EPA has preliminarily concluded that the character of the landfill wastewater is similar to that being treated at the industrial operation and that landfill-generated wastewater will typically receive treatment equivalent to that proposed today for stand-alone landfills. Therefore, EPA concludes that so long as the landfill-associated discharge is subject to the same limits as the industrial operation that an appropriate level of control is being achieved.

As previously explained, on-site generated landfill wastewater that is commingled with other industrial wastewater at an industrial site is not included within the scope of the proposal. Thus, under the proposed approach, wastewater discharges from landfills located at Centralized Waste Treatment (CWT) facilities would be excluded from this regulation so long as the wastewater is commingled for treatment. In the Agency's current thinking, the categorical limitations and standards to be established for the Centralized Waste Treatment Category and codified at 40 CFR Part 429, would specifically cover landfill generated wastewater at CWT facilities (60 FR 5464, note: EPA currently intends to publish a reproposed CWT rule in 1998 and promulgate the final rule in 1999). Given the pollutant characteristics of the landfill leachate, landfill leachate flows would likely be subject to the CWT effluent limitations established under the Organics Subcategory.

Further, under this proposal, a landfill facility that accepts wastewater from off-site for treatment may, in some circumstances, itself be subject to either landfill limitations or CWT limitations. This will depend on whether the wastewater treated in its treatment system is exclusively landfill-generated wastewater or not. For example, if a landfill facility accepts any wastewater from a non-landfill source for treatment in its wastewater treatment system, then that treatment system is to be considered a CWT and would be subject to the guidelines and standards to be codified at 40 CFR Part 429. However, a landfill facility may accept wastewater for treatment that is generated off-site from off-site landfills. If a landfill facility accepts wastewater from landfill generated sources, and only from landfill generated sources, then that facility is subject to the effluent guidelines and standards proposed to be established for the landfills category. The final guideline for CWT will modify the definition of a CWT to clarify this applicability issue.

IV. Regulatory History of the Landfills Category

Depending on the type of wastes disposed at a landfill, the landfill may be subject to regulation and permitting under either Subtitle C or Subtitle D of RCRA. Subtitle C facilities receive wastes that are identified or listed as hazardous wastes under EPA regulations. Subtitle D landfills can accept wastes which are not required to be sent to Subtitle C facilities. The following sections outline some of the key regulations that have been developed to control the environmental impacts of Subtitle C and Subtitle D landfills.

A. RCRA Subtitle C

Subtitle C of RCRA directs EPA to promulgate regulations to protect human health and the environment from the improper management of hazardous wastes from ''cradle-to-grave''. Among EPA's key duties under RCRA Subtitle C is the requirement to promulgate regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes. (Section 3001). EPA must also promulgate standards that apply to generators and transporters of hazardous waste as well as standards for the owners and operators of hazardous waste treatment, storage and disposal (TSD) facilities (Sections 3002–3004). In addition, RCRA Section 3005 required

[6] Responses to the Questionnaire show that many OCPSF facilities also collect landfill leachate as well as contaminated groundwater. In the case of contaminated groundwater, these flows are addressed through corrective actions programs at the site and have not been considered for regulation under this guideline. The exclusion for contaminated groundwater is further discussed later in this section. Typically, contaminated groundwater is treated separately from other industrial wastewaters.

EPA to establish a permitting system for each owner or operator of a TSD facility.

These regulations establish a system for tracking the disposal of hazardous wastes and performance design requirements for landfills accepting hazardous waste. RCRA Subtitle C hazardous waste regulations apply to landfills that presently accept hazardous wastes or have accepted hazardous waste at any time after November 19, 1980.

1. Land Disposal Restrictions

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: (1) Meet EPA-established treatment standard for the waste prior to land disposal, or (2) dispose of the waste in a land disposal unit that has been found to satisfy the statutory no migration test. A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous (RCRA Sections 3004 (d),(e),(g)(5)).

Under Section 3004, the treatment standards that EPA develops may be expressed as either constituent concentration levels or as specific methods of treatment. The criteria for these standards is that they must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized (RCRA Section 3004(m)(1)). For purposes of the restrictions, the RCRA program defines land disposal to include, among other things, any placement of hazardous waste in a landfill. Land disposal restrictions are published in 40 CFR Part 268.

EPA has used hazardous waste treatability data as the basis for land disposal restrictions standards. First, EPA has identified Best Demonstrated Available Treatment Technology (BDAT) for each listed hazardous waste. BDAT is that treatment technology that EPA finds to be the most effective treatment for a waste which is also readily available to generators and treaters. In some cases EPA has designated as BDAT for a particular waste stream a treatment technology shown to have successfully treated a similar but more difficult to treat waste stream. This ensured that the land disposal restrictions standards for a listed waste stream were achievable since they always reflected the actual treatability of the waste itself or of a more refractory waste.

As part of the Land Disposal Restrictions (LDR), Universal Treatment Standards (UTS) were promulgated as part of the RCRA phase two final rule (July 27,1994). The UTS are a series of concentrations for wastewaters and non-wastewaters that provide a single treatment standard for each constituent. Previously, the LDR regulated constituents according to the identity of the original waste; thus, several numerical treatment standards might exist for each constituent. The UTS simplified the standards by having only one treatment standard for each constituent in any waste residue.

The LDR treatment standards established under RCRA may differ from the Clean Water Act effluent guidelines proposed here today both in their format and in the numerical values set for each constituent. The differences result from the use of different legal criteria for developing the limits and resulting differences in the technical and economic criteria and data sets used for establishing the respective limits.

There may be differences in how standards are expressed for the LDR and effluent guidelines. For example, LDR may establish a single concentration limit for particular waste hazardous constituents whereas the effluent guidelines establish monthly and daily average limits. Additionally, the effluent guidelines provide for several types of discharge, including new versus existing sources and indirect versus direct discharge.

The differences in numerical limits established under the Clean Water Act may differ not only from LDR and UTS but also from point-source category to point-source category (e.g., Electroplating, 40 CFR Part 413; and Metal Finishing, 40 CFR Part 433). The effluent guidelines limitations and standards are industry-specific, subcategory-specific, and technology-based. The numerical limits are typically based on different data sets that reflect the performance of specific wastewater management and treatment practices. Differences in the limits reflect differences in the statutory factors that the Administrator is required to consider in developing technically and economically achievable limitations and standards—manufacturing products and processes (which, for landfills involves types of waste disposed), raw materials, wastewater characteristics, treatability, facility size, geographic location, age of facility and equipment, non-water quality environmental impacts, and energy requirements. A consequence of these differing approaches is that similar or identical waste streams are regulated at different levels dependent on the receiving body of the wastewater, e.g. a POTW, a surface water, or a land disposal facility.

2. Minimum Technology Requirements

In order to further protect human health and the environment from the adverse affects of hazardous waste disposed in landfills, the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA established minimum technology requirements for landfills receiving hazardous waste. These provisions required the installation of double liners and leachate collection systems at new landfills, replacements of existing units, and lateral expansions of existing units. HSWA also required all hazardous waste landfills to install groundwater monitoring wells by November 8, 1987. Performance regulations governing the operation of hazardous waste landfills are included in 40 CFR Parts 264 and 265.

B. RCRA Subtitle D

Landfills managing non-hazardous wastes are regulated under the RCRA Subtitle D program. A brief summary of these RCRA Subtitle D regulations is provided below.

- 40 CFR Part 257, Subpart A Criteria

EPA promulgated these criteria on September 13, 1979 (44 FR 53460) under the authority of RCRA Sections 1008(a) and 4004(a) and Sections 405(d) and (e) of the Clean Water Act. These criteria apply to all solid waste disposal facilities and practices. However, certain facilities and practices are not covered by the criteria, such as agricultural wastes returned to the soil as fertilizers or soil conditioners; overburden resulting from mining operations; land application of domestic sewage or treated domestic sewage; hazardous waste disposal facilities which are subject to regulations under RCRA Subtitle C (discussed below); municipal solid waste landfills that are subject to the revised criteria in 40 CFR Part 258 (discussed below); and use or disposal of sewage sludge on the land when the sewage sludge is used or disposed in accordance with 40 CFR Part 503 (*See* 40 CFR Part 257.1(c)(1)–(11)).

The criteria include general environmental performance standards addressing eight major areas: flood plains, protection of endangered species, protection of surface water,

protection of groundwater, limitations on the land application of solid waste, periodic application of cover to prevent disease vectors, air quality standards (prohibition against open burning), and safety practices ensuring protection from explosive gases, fires, and bird hazards to airports. Facilities which fail to comply with any of these criteria are considered open dumps, which are prohibited by RCRA Section 4005. Those facilities which meet the criteria are considered sanitary landfills under RCRA Section 4004(a).

• 40 CFR Part 258 Revised Criteria for Municipal Solid Waste Landfills (MSWLFs)

On October 9, 1991, EPA promulgated revised criteria for MSWLFs in accordance with the authority provided in RCRA Sections 1008(a)(3), 4004(a), 4010© and CWA Sections 405(d) and (e) (*see* 56 FR 50978). Under the terms of these revised criteria, MSWLFs are defined to mean a discrete area of land or an excavation that receives household waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in 40 CFR 257.2 and 258.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new unit, existing MSWLF unit or a lateral expansion.

The MSWLF revised criteria include location standards (Subpart B), operating criteria (Subpart C), design criteria (Subpart D), groundwater monitoring and corrective action (Subpart E), closure and post-closure care criteria (Subpart F), and financial assurance requirements (Subpart G). The design criteria provide that new MSWLF units and lateral expansions of existing units (as defined in Section 258.2) must be constructed in accordance with either (1) a design approved by a Director of a State whose MSWLF permit program has been approved by EPA and which satisfies a performance standard to ensure that unacceptable levels of certain chemicals do not migrate beyond a specified distance from the landfill (Sections 258.40(a)(1), (c), (d), Table 1) or (2) a composite liner and a leachate collection system (Sections 258.40(a)(2), (b)). The groundwater monitoring criteria generally require owners or operators of MSWLFs to monitor groundwater for contaminants and generally implement a corrective action remedy when monitoring indicates that a groundwater protection standard has been exceeded. However, certain small MSWLFs located in arid or remote locations are exempt from both design and groundwater monitoring requirements. The closure standards require that a final cover be installed to minimize infiltration and erosion. The post-closure provisions generally require, among other things, that groundwater monitoring continue and that the leachate collection system be maintained and operated for 30 years after the MSWLF is closed. The Director of an approved State may increase or decrease the length of the post-closure period.

Again, as is the case with solid waste disposal facilities which fail to meet the open dumping criteria in 40 CFR Part 257, Subpart A, MSWLFs which fail to satisfy the revised criteria in Part 258 constitute open dumps (40 CFR 258.1(h)). All solid waste disposal facilities, i.e., MSWLFs, that are subject to the requirements in the Part 258 revised criteria and which collect and discharge landfill-generated waste waters are included in this category.

• 40 CFR Part 257, Subpart B CESQG Revised Criteria

A Conditionally Exempt Small Quantity Generator (CESQG) is generally defined as one who generates no more than 100 kilograms of hazardous waste per month in a calendar year (40 CFR 261.5(a)). Such CESQGs (with certain exceptions) are not subject to RCRA Subtitle C requirements. However, on July 1, 1996, EPA (1) amended Part 257 to establish criteria that must be met by non-municipal, non-hazardous solid waste disposal units that receive CESQG waste and (2) established separate management and disposal standards (in 40 CFR 261.5(f)(3) and (g)(3)) for those who generate CESQG waste (*see* 61 FR 342169). The CESQG revised criteria for such disposal units include location standards, groundwater monitoring, and corrective action requirements.

V. Industry Profile

The growth of the landfills industry is a direct result of RCRA and subsequent EPA and State regulation that establish the conditions under which solid waste may be disposed. The adoption of increased control measures required by RCRA has had a number of ancillary effects.

The RCRA requirements have affected the landfill industry in different ways. On the one hand, it has forced many landfills to close because they lacked adequate on-site controls to protect against migration of hazardous constituents in the landfill, and it was not economical to upgrade the landfill facility. As a result, a large number of landfills, especially facilities serving small populations, have closed rather than incur the significant expense of upgrading.

Conversely, large landfill operations have taken advantage of economies of scale by serving wide geographic areas and accepting an increasing portion of the nation's solid waste. For example, responses to EPA's Waste Treatment Industry Survey indicated that 75 percent of the nation's municipal solid waste was deposited in large landfills representing only 25 percent of the landfill population.

EPA has identified several trends in the waste disposal industry that may increase the quantity of leachate produced by landfills. More stringent RCRA regulation and the restrictions on the management of wastes have increased the amount of waste disposed at landfills as well as the number of facilities choosing to send wastes off-site to commercial facilities in lieu of pursuing on-site management options. This will increase treated leachate discharges from the nation's landfills, thus potentially putting at risk the integrity of the nation's waters. Further, as a result of the increased number of leachate collection systems, the volumes of leachate requiring treatment and disposal has greatly increased.

EPA identified approximately 11,000 landfill facilities located throughout the country in 1992. Out of the 11,000 facilities, EPA has determined that the vast majority of these facilities either are closed or do not generate wastewaters that EPA is proposing for regulation. Based on survey responses, EPA believes that 164 facilities would be affected by this proposed regulation.

In the case of landfills subject to regulation under Subtitle D, EPA projects that there are 158 facilities which discharge in-scope wastewater directly to receiving streams and which may be affected by this proposal. EPA estimates that there are 762 facilities which collect in-scope wastewaters but discharge indirectly to a POTW and would not be affected by this proposal because EPA is not proposing to regulate indirect discharges from non-hazardous, Subtitle D landfills. There are an additional 343 facilities which collect in-scope wastewaters but do not discharge to surface waters or to POTWs, and are also not affected by this proposal. The means for disposing of their wastewaters include hauling off-site to a centralized waste treatment facility, evaporation, recirculation back to the landfill, and land application.

With respect to landfills subject to regulation under Subtitle C, EPA estimates that there are six hazardous landfill facilities which discharge indirectly to POTWs that may be affected by this proposal. EPA estimated that there are no hazardous landfills discharging directly to surface waters. EPA estimates that there are 141 hazardous landfills which collect in-scope wastewaters but do not discharge wastewater to surface waters or to a POTW. Methods of wastewater disposal include hauling wastewater off-site to a centralized waste treatment facility, underground injection, and solidification. Additionally, EPA estimates that there are more than 250 industrial facilities which contain landfills but would be excluded from this regulation as a result of the factors discussed in Section [III].

VI . Summary of EPA Activities and Data Gathering Efforts

This section describes the sources of data used by EPA in support of this proposal.

A. Preliminary Data Summary for the Hazardous Waste Treatment Industry

EPA's initial effort to develop effluent limitations guidelines and pretreatment standards for the waste treatment industry began in 1986. The Agency looked at a range of facilities, including landfills, that received waste from off-site for treatment, recovery or disposal. The purpose of this study was to develop information to characterize the hazardous waste treatment industry, its operations, and pollutant discharges to the nation's waters. EPA published the results of its examination of the industry in the ''Preliminary Data Summary for the Hazardous Waste Treatment Industry'' in 1989 (EPA 440/1–89–100). This report focused on three types of hazardous waste treatment industries: landfills, incinerators with wet scrubbers, and aqueous hazardous waste treaters.

After a thorough analysis of the landfill data presented in the Preliminary Data Summary, EPA decided it should develop an effluent guidelines regulation for the landfills category. EPA's decision to develop effluent limitations guidelines was based on the Preliminary Data Summary's assessment of the current and future trends in the landfill industry, its analysis of the concentrations of pollutants in the raw leachate, and the study's discussion on the treatment and control technologies available for effective pollution reduction in landfill leachate.

The Preliminary Data Summary outlined several trends in the waste disposal industry that are likely to affect the amount of leachate produced by landfills and leachate characteristics. The summary projected an increase in the amount of waste disposed at landfills as a result of more stringent regulations and restrictions on certain waste management practices. The increase in the number of facilities choosing to send wastes off-site to commercial facilities in lieu of pursuing on-site management options ultimately increases the amount of leachate discharged each year from the nation's landfills, thus potentially putting at risk the integrity of the nation's waters.

Another trend identified in the Preliminary Data Summary is the installation of leachate collection systems. Many of these systems are a result of current RCRA regulations which require leachate collection systems in hazardous landfills or federal regulations requiring them in municipal landfills. As a result of the increased number of leachate collection systems, the volumes of leachate requiring treatment and disposal has greatly increased. This increased volume of leachate was another reason EPA felt it necessary to propose an effluent guideline for landfills.

B. Survey Questionnaires

A major source of information and data used in developing effluent limitations guidelines and standards was industry responses to detailed technical and economic questionnaires, and the subsequent Detailed Monitoring Questionnaires (DMQs) distributed by EPA under the authority of Section 308 of the Clean Water Act. For the Landfills industry, the data collection process was done in several steps. First, EPA identified a population of 595 Subtitle C landfills and 10,330 Subtitle D landfills in the country.

Second, a screener survey was developed to collect initial information on all possible landfill sites in the U.S. and to update information on ownership and facility contacts. Screener surveys were mailed to all 595 Subtitle C landfills and to 4401 Subtitle D landfills (approximately 43 percent). Information collected by the screener surveys included:

- mailing address;
- landfill type, including types and amount of solid waste disposed;
- landfill capacity;
- wastewater generation rates as a result of landfill operations, including leachate, gas condensate, and contaminated groundwater;
- regulatory classification;
- ownership status;
- discharge status;
- monitoring practices; and
- treatment technology.

Of the 4,996 screener questionnaires mailed, there were 3,628 respondents. Of these, 3,581 were of sufficient quality to be used for data analysis. Of these, EPA identified 1,024 landfills that generate and collect one or more types of in-scope wastewaters.

Once the information from the screener surveys was tabulated and analyzed, EPA then developed a technical Detailed Questionnaire to obtain more information from the in-scope facilities identified in the screener surveys.

In determining which in-scope facilities should receive the technical Detailed Questionnaire, EPA weighted the list toward those landfills with wastewater treatment facilities in place. All in-scope facilities selected fell into the following four categories:

1. Questionnaires were sent to all commercial, municipal, or government facilities identified from the screener that had wastewater treatment (for their landfill generated wastewaters) and were direct or indirect dischargers.

2. A 25 percent sample of landfills were selected from the list of commercial, municipal, or government facilities identified from the screener that had wastewater treatment, but were zero or alternative dischargers (i.e., do not discharge to a POTW or to a surface water).

3. A 40 percent sample of landfills were selected from the list of non-commercial private (captive or intra-company) facilities identified from the screener that had wastewater treatment.

4. A 10 percent sample of landfills were selected from the list of facilities identified from the screener that collected and discharged in-scope wastewater, but did not have wastewater treatment.

This selection criteria resulted in a mailing of the Detailed Questionnaires to 252 in-scope facilities. The Detailed Questionnaires solicited technical and economic information on landfill operations, employment, revenue, wastewater generation, wastewater treatment, and wastewater monitoring data.

Of the 252 recipients, 220 responded with sufficient technical data to be included in the final EPA Detailed Questionnaire database.

In addition to the Detailed Questionnaire, EPA also requested detailed wastewater monitoring information from 27 in-scope facilities from the questionnaire mailing list. These facilities were selected based

upon their responses to the Detailed Questionnaire. EPA reviewed each facility's monitoring summary provided in the questionnaire, discharge permit requirements, and their on-site treatment technologies. From these responses, EPA determined that 27 facilities could provide useful information on technology performance and pollutant removals.

The selected facilities were requested to send analytical data (1992, 1993, and 1994 annual data) on daily equalized influent to their wastewater treatment system, as well as effluent data from the treatment system. The three years of analytical data were used to help EPA calculate the variability factors (Section IX of today's notice) used in determining the industry effluent limits. Analytical data for intermediate waste treatment sampling points were also requested for some facilities. In this manner, EPA was able to obtain performance information across individual treatment units in addition to the entire treatment process.

EPA also conducted a thorough review of each DMQ response to ensure that the data provided was representative of the facility's treatment system. EPA collected data from 24 semi-continuous and continuous treatment systems and two batch treatment systems.

C. Wastewater Sampling and Site Visits

EPA conducted wastewater characterization site visits at 15 landfill facilities. The purpose of these visits was to collect information on the facility's landfilling operations and collect influent raw wastewater samples to help characterize the Landfill industry. The selection of facilities was based on the responses to the Detailed Questionnaire on type of landfill (e.g., construction and demolition, ash, sludge, industrial, and hazardous). EPA visited facilities from as broad a cross section of the industry as possible.

EPA spent one day at each landfill. During the site visits, EPA collected information on the types of waste accepted, acceptance criteria, and landfill operating practices. EPA emphasized obtaining wastewater characterization information, such as the type, source, and quantity of raw wastewaters generated, and wastewater collection methods employed. Grab samples of the untreated wastewater were collected from each landfill and the data that resulted from these samples were used in the characterization of the Landfills industry.

EPA conducted engineering site visits at 19 facilities. The purpose of these visits was to evaluate each facility as a potential week-long sampling candidate. The selection of these facilities was based on the responses to the Detailed Questionnaire on types of wastewater treatment on site. Facilities selected for engineering site visits employed various types of treatment, including: equalization, chemical precipitation, biological, filtration, and reverse osmosis. During the engineering site visit, EPA obtained information on:

- the facility and its operations;
- the wastes accepted for treatment and the facility's acceptance criteria;
- the raw wastewater generated and its sources;
- the wastewater treatment on site;
- the location of potential sampling points; and
- the site-specific sampling needs, issues of access, and required sampling safety equipment.

EPA conducted week-long sampling efforts at six landfills. Selection of these facilities was based on the analysis of the information collected during the engineering site visits.

EPA then prepared a detailed sampling plan for each sampling episode. Wastewater samples were collected at influent, intermediate, and effluent sample points throughout the entire on-site wastewater treatment system. Sampling at 5 of the facilities consisted of 24-hour composite samples for 5 consecutive days. For the sixth facility, composites were taken of 4 completed batches over 5 days. Grab samples were collected for oil and grease, and the volatile organic grab samples were composited in the laboratory prior to analysis. Samples were then analyzed using EPA's Office of Water approved analytical methods. EPA sampling assesses the following technologies:

- Equalization
- Chemical precipitation
- Aerobic biological
- Anaerobic biological
- Carbon adsorption
- Multimedia filtration
- Reverse osmosis
- Air stripping
- Steam stripping
- Sludge dewatering

Data resulting from the influent samples were used to develop the list of pollutants of interest (POIs) and raw wastewater characteristics. The data collected from the influent, intermediate, and effluent points were used to analyze the effective treatment at the facilities, develop current discharge concentrations, pollutant loadings, and the Best Available Treatment (BAT) options for the Landfills industry. Data collected from the effluent points were used to calculate long term averages (LTAs) for each of the proposed regulatory options.

D. Additional Data Sources

In developing the Landfills effluent guidelines, EPA evaluated the following data sources:

- CERCLA Site Discharges to POTWs Treatability Manual;
- Fate of Priority Pollutants in Publicly Owned Treatment Works (50 POTW Study) database;
- EPA's National Risk Management Research Laboratory (NRMRL) treatability database; and
- Industry Supplied Data.

These data sources and their uses for the development of the Landfills effluent guidelines are discussed below.

Data from the ''CERCLA Site Discharges to POTWs Treatability Manual'' (EPA 540/G–90/005, August 1990) were used to supplement the groundwater data collected during characterization and week-long sampling events. The purpose of the study was to:

- Identify the variety of compounds and concentration ranges present in groundwater at CERCLA sites;
- Collect data on the treatability of compounds achieved by various on-site pretreatment systems; and
- Evaluate the impact of CERCLA discharges to a receiving POTW.

A total of eighteen CERCLA facilities were sampled in this study; however, only facilities which received contaminated groundwater as a result of landfilling activities were selected to be used in conjunction with EPA groundwater sampling data. The data from seven CERCLA facilities were combined with EPA sampling data to help characterize the Hazardous Landfill Subcategory and to develop both the current discharge concentrations and pollutant loadings for facilities in the Hazardous Landfill Subcategory. In addition, data from three CERCLA facilities which employed carbon adsorption were combined with EPA sampling data to conduct the pass-through analysis and to evaluate the performance of carbon adsorption treatment technology.

EPA used the data included in the report entitled ''Fate of Priority Pollutants in Publicly Owned Treatment Works'' (EPA 440/1–82/303, September 1982), commonly referred to as the ''50–POTW Study'', in determining those pollutants that would pass through a POTW. This study presents data on the performance of 50 representative POTWs which were operating at or near the efficiency required to meet

secondary treatment (30 mg/l BOD^5 and 30 mg/l TSS). The 50–POTW study data was edited prior to its use in the landfills regulation. The data editing hierarchal rules were devised to minimize the possibility that low POTW removals might simply reflect low influent concentrations instead of being a true measure of treatment effectiveness. The hierarchial data editing rules for the 50–POTW study were as follows: (1) Detected pollutants must have at least three pairs (influent/effluent) of data points to be included, (2) average pollutant influent levels less than 10 times the pollutant analytical Minimum Level (ML) were eliminated, and (3) if none of the average pollutant influent concentrations exceeded 10 times the ML, then the average influent values less than 20 µg/l were eliminated. The remaining averaged pollutant influent values and the corresponding averaged effluent values were then used to calculate the average percent removal for each pollutant when conducting the POTW pass-through analysis for this industry, which is discussed in detail in the Technical Development Document.

EPA's National Risk Management Research Laboratory (NRMRL) developed a treatability data base (formerly called the Risk Reduction Engineering Laboratory (RREL) data base). This computerized data base provides information, by pollutant, on removals obtained by various treatment technologies. The data base provides the user with the specific data source, and the industry from which the wastewater was generated. The NRMRL data base was used when conducting the POTW pass-through analysis by supplementing the treatment information provided in the 50–POTW study when there was insufficient information on specific pollutants. For each of the pollutants of interest (POIs) not found in the 50–POTW data base, data from portions of the NRMRL data base were obtained. These files were edited so that only treatment technologies representative of typical POTW secondary treatment operations (activated sludge, activated sludge with filtration, aerobic lagoons) were used. The files were further edited to include information pertaining to domestic or industrial wastewater, unless only other wastewater data were available. Pilot-scale and full-scale data were used; bench-scale data were eliminated. Data from papers in peer-reviewed journals or government reports were used; lesser quality references were edited out. From the remaining pollutant removal data, the average percent removal for each pollutant was calculated.

Finally, EPA solicited any data on landfill wastewaters that may be relevant from the landfills industry. Several facilities supplied EPA with leachate and groundwater characterization and treatability studies. The data included in these studies were analyzed and compared to EPA sampling data collected at the facilities. Analysis of the industry provided data confirmed the results of several of EPA sampling episodes.

VII. Development of Subcategorization Approach

For today's proposal, EPA considered whether a single set of effluent limitations and standards should be established for this industry, or whether different limitations and standards were appropriate for subcategories within the industry. In reaching its preliminary decision that subcategorization is required, EPA considered various factors. The CWA requires EPA, in developing effluent limitations, to assess several factors including manufacturing processes, products, the size and age of site, wastewater use, and wastewater characteristics. The landfills industry, however, is not typical of many of the other industries regulated under the CWA because it does not produce a product. Therefore, EPA developed additional factors that specifically address the characteristics of landfill operations. Similarly, several factors typically considered for subcategorization of manufacturing facilities were not considered applicable to the landfills industry. The factors considered for subcategorization are listed below:

- Regulatory classification;
- Types of wastes received;
- Wastewater characteristics;
- Facility size;
- Ownership;
- Facility location;
- Economic impacts;
- Treatment technologies and costs;
- Facility age;
- Energy requirements; and
- Non-water quality impacts.

A. Selection of Subcategorization Approach

Based on its assessment of the above factors, EPA has preliminarily determined that it should segment the landfill industry and develop different effluent limitations and pretreatment standards for subcategories of the industry. EPA concluded that the most appropriate basis for subcategorization is by landfill classification under RCRA for the reasons explained in greater detail below. Subcategorization on this basis incorporates many of the most relevant differences within the landfills industry. EPA found the types of waste received at the landfill and the resulting characteristics of the wastewater most clearly correlated with the RCRA classification of a landfill. Additionally, the Agency believes that this subcategorization approach has the virtue of being the easiest to implement because it follows the same classification previously established under RCRA and currently in use (and widely understood) by permit writers and regulated entities. The Agency believes that any subcategorization at odds with existing RCRA classification approaches would potentially create unnecessary confusion to the regulated community. The proposed subcategories are described below.

Subcategory I: Subtitle D Non-Hazardous Landfills

Subcategory I would apply to wastewater discharges from all landfills classified as RCRA Subtitle D non-hazardous landfills subject to either of the criteria established in 40 CFR Parts 257 (Criteria for Classification of Solid Waste Disposal Facilities and Practices) or 258 (Criteria for Municipal Solid Waste Landfills) as explained above at Section [IV].

Subcategory II: Subtitle C Hazardous Landfills

Subcategory II would apply to wastewater discharges from a solid waste disposal facility subject to the criteria in 40 CFR 264 Subpart N—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and 40 CFR 265 Subpart N—Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Hazardous waste landfills are subject to requirements outlined in 40 CFR Parts 264 and 265 that include the requirement to maintain a leachate collection and removal systems during the active life and post-closure period of the landfill as explained previously at Section [IV].

B. Factors Considered for Basis of Subcategorization

1. Types of Waste Landfilled

The type of solid waste which is deposited in a landfill often has a direct correlation with the characteristics of the leachate produced by that landfill. EPA believes that the most practical method of distinguishing the type of waste deposited in a landfill is achieved by utilizing the RCRA classification of

landfills that distinguishes between hazardous or non-hazardous waste landfills.

There are also a number of unique landfill cells and monofills dedicated to accept only one type of non-hazardous solid waste which may include construction and demolition debris, ash, or sludge. The Agency is not proposing to further subcategorize Subtitle D landfill facilities according to the specific type of waste received. This decision is based on two considerations.

The first consideration is based on EPA's evaluation of leachate characteristics. EPA evaluated leachate characteristics from many Subtitle D landfills and concluded that raw leachate was not significantly different among monofills to merit subcategorization. This is not unexpected, as the waste deposited in municipal landfills and dedicated monofills is not mutually exclusive. Although dedicated cells may prohibit disposal of municipal refuse, a municipal waste landfill may also accept ash, sludge, and construction and demolition wastes. EPA concluded that there were no pollutants of concern identified in dedicated monofills which were not already present in municipal landfills. EPA concluded that the pollutants proposed to be regulated for the Subtitle D Subcategory will effectively address the discharges from all types of Subtitle D landfills, including those accepting only one type of waste.

The second consideration was based on ease of implementation. As discussed above, there is overlapping waste acceptance criteria, and distinct effective dates which define the type of landfill. Additionally, there are many facilities which operate both dedicated monofills and municipal landfills and which commingle wastewater prior to treatment. The Agency believes that establishing one subcategory for all non-hazardous landfills will ease implementation issues and adequately control discharges from the landfills industry. EPA solicits comment on the decision not to subcategorize Subtitle D monofills.

2. Wastewater Characteristics

EPA concluded that leachate characteristics from non-hazardous and hazardous landfills differed significantly in the types of pollutants detected and the concentrations of those pollutants. As expected, EPA found that the leachate from hazardous landfills contained a greater number of contaminants at higher concentrations compared to leachate from non-hazardous landfills. This supported subcategorization based on RCRA classification of hazardous and non-hazardous landfills.

3. Facility Size

EPA considered subcategorization of the landfills industry on the basis of site size. Three parameters were identified as relative measures of facility size: number of employees, amount of waste disposed, and wastewater flow. EPA found that landfills of varying sizes generate similar wastewaters and use similar treatment technologies. Furthermore, wastewaters from landfills can be treated to the same level regardless of facility size. EPA determined that the industry should not be subcategorized based on facility size. EPA does not propose a de-minimis flow exclusion for this guideline.

4. Ownership

EPA considered subcategorizing the industry by ownership. A significant number of landfills are owned by state, local, or federal governments, while many others are commercially or privately owned. Although there are distinct economic considerations to account for, there is no distinction in the wastewater characteristics and wastewater treatment employed at commercial or municipally owned landfills. EPA determined that the industry should not be subcategorized based on ownership.

5. Geographic Location

EPA considered subcategorizing the industry by geographic location. Landfill sites are not limited to any one region of the United States. Landfills from all sections of the country were represented in EPA's survey of the industry. Although wastewater generation rates appear to vary with annual precipitation, which is indirectly related to geographic location, a direct correlation in leachate characteristics to geographic location could not be established. Additionally, the data collected by EPA did not indicate any significant variations in wastewater treatment technologies employed by facilities in colder climates versus warmer climates, nor in the discharge water quality. EPA determined that geographic location is not an appropriate method for subcategorization.

EPA noted that geographic location may have a differential impact on the cost of operating a landfill. For example, the cost of additional land required for the installation of a treatment system or the tipping fees charged for waste disposal may vary from region to region. These issues were addressed in the estimated costs and impacts of the proposal.

6. Economic Characteristics

EPA also considered subcategorizing the industry based on the economic characteristics of the landfill facilities. If a group of facilities with common economic characteristics, such as revenue size, was in a much better or worse financial condition than others, then it might be appropriate to subcategorize based on economics. However, analysis of the financial conditions of facilities showed no significant pattern of variation across possible subcategories.

7. Treatment Technologies and Costs

The Agency did not consider treatment technologies or costs to be a basis for subcategorization.

8. Age

EPA considered whether age-related changes in leachate concentrations of pollutants necessitate different discharge limits for different age classes of landfills. Several considerations lead to the conclusion that age-related limits are not appropriate.

First, a facility's wastewater treatment system typically receives and commingles leachate from several landfills or cells of different ages. The Agency has not observed any facility which has found it advantageous or necessary to treat age-related leachates separately. Second, based on responses to the questionnaire, discussions with landfill operators and historical data, EPA understands that leachate pollutant concentrations appear to change substantially over the first two to five years of operation but then change only slowly thereafter.

These two observations imply that treatment systems must be designed to accommodate the full range of concentrations expected in influent wastewaters. EPA concluded that the proposed BPT/BAT/PSES/NSPS/PSNS treatment technologies are successfully able to treat the variations in landfill wastewaters likely to occur due to age-related changes.

Finally, EPA has taken into account the ability of treatment systems to accommodate age-related changes in leachate (influent) concentrations, as well as short-term fluctuations by proposing effluent limitations which reflect the variability observed in monitoring data spanning up to three years. Additionally, age-related effects on treatment technologies, costs and pollutant loads were addressed by utilizing data collected from a variety of

landfills in various stages of age and operation (e.g. closed, inactive, active).

EPA solicits comment and data on its conclusions regarding the relationship of wastewater characteristics to the age of the landfill.

9. Energy Requirements

The Agency did not subcategorize by energy requirements because this is not a significant factor in this industry and is not related to wastewater characteristics. Energy costs resulting from this regulation were accounted for in the economic impact assessment for this regulation.

10. Non-Water Quality Impacts

The Agency evaluated the impacts of this regulation on the potential for increased generation of solid waste and air pollution. The non-water quality impacts did not constitute a basis for subcategorization. The non-water quality impacts and costs of solid waste disposal is included in the economic analysis and regulatory impact analysis for this regulation.

VIII. Wastewater Characterization

This section describes the sources of wastewater flows proposed to be regulated at landfills. This section also characterizes and describes these wastewater discharge flows.

A. Sources of Landfill Generated Wastewater

Approximately 7.1 billion gallons of in-scope wastewater were generated at landfill facilities in 1992. EPA has proposed to regulate the following landfill sources of wastewater: leachate, gas collection condensate, truck/equipment washwater, drained free liquids, laboratory wastewaters, and contaminated stormwater. Additional sources of wastewaters generated by landfills but not proposed to be regulated under this guideline include contaminated groundwater, non-contaminated stormwater, and sanitary wastewaters. These wastewaters are described below.

1. *Leachate*, as defined in 40 CFR 258.2, is liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. Over time the potential for certain pollutants to movement into the wider environment increase. As water passes through the landfill, it may ''leach'' pollutants from the disposed waste moving them deeper into the soil. This presents a potential hazard to public health and the environment through groundwater contamination and other means. One measure used to prevent the movement of toxic and hazardous waste constituents from a landfill is a landfill liner operated in conjunction with a leachate collection system. Leachate is typically collected from a liner system placed at the bottom of the landfill. Leachate also may be collected through the use of slurry walls, trenches or other containment systems. The leachate generated varies from site to site based on a number of factors including: the types of waste accepted; operating practices (including shedding, daily cover and capping); the depth of fill; compaction of wastes; annual precipitation; and landfill age. Landfill leachate accounts for over 95 percent of the in-scope wastewaters.

2. *Gas Collection Condensate* is liquid which has condensed in a gas collection system during the extraction of gas from the landfill. Gases such as methane and carbon dioxide are generated due to microbial activity within the landfill and must be removed to avoid hazardous conditions. The gases tend to contain high concentrations of water vapor which is condensed in traps staged throughout the gas collection network. The gas condensate contains volatile compounds and accounts for a relatively small percentage of flow from a landfill.

3. *Drained Free Liquids* are aqueous wastes drained from waste containers (e.g. drums, trucks) or wastewater resulting from waste stabilization prior to landfilling. Landfills which accept containerized waste may generate this type of wastewater. Wastewaters generated from these waste processing activities are collected and usually combined with other landfill generated wastewaters for treatment at the wastewater treatment plant. Due to the limited amount of data submitted to EPA on the characteristics of drained free liquids, and due to the potentially unique nature of these flows, the Agency solicits comments and data on including drained free liquids within the scope of this guideline.

4. *Truck/Equipment Washwater* is generated during either truck or equipment washes at landfills. During routine maintenance or repair operations, trucks and/or equipment used within the landfill (e.g., loaders, compactors, or dump trucks) are washed and the resultant wastewaters are collected for treatment. In addition, it is common practice for many facilities to wash the wheels, body, and undercarriage of trucks used to deliver the waste to the open landfill face upon leaving the landfill. On-site wastewater treatment equipment and storage tanks are also periodically cleaned.

5. *Laboratory-Derived Wastewater* is generated from on-site laboratories which characterize incoming waste streams and monitor on-site treatment performance.

6. *Contaminated Stormwater* is runoff that comes in direct contact with the waste or waste handling and treatment areas. Stormwater which does not come into contact with the wastes .

7. *Non-contaminated Stormwater* includes stormwater which flows off the cap or cover of the landfill and does not come in direct contact with solid waste. The Agency is not proposing to regulate non-contact stormwater because non-contact stormwater flows are not considered process wastewaters and are already subject to existing stormwater regulations. Non-contaminated storm water discharged through municipal storm water systems or that discharge directly to waters of the United States are subject to National Pollutant Discharge Elimination System (NPDES) storm water permit requirements under 40 CFR 122.26 (b)(14)(v).

8. *Contaminated Groundwater* is water below the land surface in the zone of saturation which has been contaminated by landfill leachate. EPA is also not proposing to include within the scope of regulated flows groundwater which has been contaminated by a landfill and is collected and discharged. The reasons for this decision are as follows.

During development of this proposal, EPA considered whether it should also include contaminated groundwater flows within the scope of this guideline. Historically, many landfill operations have caused the contamination of local groundwater, mostly as a result of leakage from unlined landfill units in operation prior to the minimum technology standards for landfills established by RCRA Subtitle C and D regulations. Subsequently, State and Federal action under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) has required facilities to clean up contaminated groundwater. In many cases this has resulted in the collection, treatment and discharge of treated groundwater to surface waters. In addition, in the case of RCRA Subtitle C hazardous waste landfills and Municipal solid Waste Landfills (MSWLF), applicable regulatory standards require groundwater monitoring and post-closure care and, in the event of groundwater contamination, corrective action measures. These requirements may also result in treatment of contaminated groundwater by such landfill facilities.

EPA, however, has not included contaminated groundwater flows within its assessment for this guideline. Several reasons support EPA's decision not to include contaminated groundwater within the flows evaluated for this proposal.

EPA evaluated flows, pollutant concentrations, treatment in place, and current treatment standards for discharges of contaminated groundwater from landfills. From this evaluation, EPA concluded that pollutants in contaminated groundwater flows are often very dilute or are treated to very low levels prior to discharge. EPA concluded that, whether as a result of corrective action measures taken pursuant to RCRA authority or State action to clean up contaminated landfill sites, landfill discharges of treated contaminated groundwater are being adequately controlled. Consequently, further regulation under this proposed rule would be redundant and unnecessary.

EPA is aware that there may be some landfill facilities that collect and treat both landfill leachate and contaminated groundwater flows. In the case of such facilities, EPA believes that decisions regarding the appropriate discharge limits again should be left to the judgment of the permit writer. As indicated above, contaminated groundwater may be very dilute or may have characteristics similar in nature to leachate. In cases where the groundwater is very dilute the Agency is concerned that contaminated groundwater may be used as a dilution flow. In these cases, the permit writer should develop BPJ permit limits based on separate treatment of the flows or develop BPT limits based on the combined wastestream formula in order to prevent dilution of the regulated leachate flows. However, in cases where the groundwater may exhibit characteristics similar to leachate, commingled treatment is appropriate because it is obviously more cost effective and environmentally beneficial than separate treatment. EPA recommends that the permit writer consider the characteristics of the contaminated groundwater before making a determination if commingling groundwater and leachate for treatment is appropriate.

B. Wastewater Characterization

The Agency's sampling program for this industry detected over 80 pollutants (conventional, priority and non-conventional) in waste streams at treatable levels. EPA has characterized landfill generated wastewater using data obtained in EPA sampling episodes and industry supplied data obtained through the EPA 308 Questionnaires. As previously explained, EPA sampled at five hazardous landfills and 13 non-hazardous landfills. EPA analyzed untreated and treated wastewaters for over 470 pollutants at each landfill, including 233 priority and nonconventional organic compounds, 69 priority and nonconventional metals, four conventional pollutants, and 123 toxic and nonconventional pollutants including pesticides, herbicides, dioxins and furans. EPA developed a list of pollutants of interest (POIs) for the landfills industry by eliminating pollutants not considered to be at treatable levels in raw wastewaters. The list of POIs was carried forward in the analysis.

EPA asked all facilities receiving EPA Detailed Questionnaires to provide summary characterization data for their landfill generated wastewaters. The Agency requested selected facilities to submit detailed analytical data and Detailed Monitoring Reports (DMRs) on their wastewaters as part of the Detailed Monitoring Questionnaire. Additionally, EPA reviewed several other wastewater characterization data sources for comparison purposes.

1. Raw Wastewater at Subtitle D, Municipal Solid Waste (MSW) Landfills

Wastewater generated at MSW landfills contained a range of conventional, toxic and nonconventional pollutants. Wastewaters contained significant concentrations of common nonconventional metals such as iron, magnesium, manganese and boron. Generally, concentrations of toxic heavy metals were found at relatively low concentrations. EPA did not find toxic metals such as arsenic, cadmium, mercury and lead at treatable levels in any of EPA's sampling episodes at MSW landfills.

Typical organic pollutants found in MSW landfill leachate included 2-butanone (methyl ethyl ketone) and 2-propanone (acetone) which are common solvents used in household products (such as paints and nail polish) and common industrial solvents such as 4-methyl-2-pentanone and 1,4-dioxane. Trace concentrations of a few pesticides were detected in wastewaters from municipal landfills. Additionally, the wastewater was characterized by high loads of organic acids such as benzoic acid and hexanoic acid resulting from anaerobic decomposition of solid waste.

EPA identified 34 pollutants of interest for MSW landfills including: eight conventional/nonconventional pollutants, eight metals, 16 organics/pesticides/herbicides, and two dioxins/furans. Three hundred sixteen pollutants were never detected in EPA sampling episodes and approximately 120 pollutants were detected but were not considered to be at treatable levels. A list of the pollutants and sampling results may be found in the Technical Development Document.

2. Raw Wastewater at Subtitle D, Non-Municipal Landfills

Certain Subtitle D landfills do not accept municipal household refuse and do not accept hazardous waste. These unique facilities, termed ''monofills'' because they accept only one type of waste, typically accept one of the following types of solid waste: municipal incinerator ash, wastewater treatment sludge, and construction and demolition (C&D) wastes.

Because of the unique nature of these monofills, EPA performed an analysis to determine if significant differences existed in raw wastewater characteristics from Subtitle D Municipal Solid Waste (MSW) landfills and these monofill facilities. However, characterization and treatment data collected as part of EPA's sampling episodes focused primarily on the more prevalent MSW landfills. To complete this analysis, additional data on raw wastewaters from monofill facilities were collected from several sources including prior EPA studies and industry-supplied data. These data were evaluated to identify any pollutants found at significant concentrations in monofills which were not found in MSW landfills.

Based on a review of these data sources, EPA observed that the pollutants present in raw wastewaters from monofills were not significantly different from those found in MSW landfills, and, in fact, only a subset of MSW landfill POIs were found in raw wastewaters from these monofill facilities. In addition, concentrations of virtually all pollutants found in ash, sludge, and C&D waste monofills were significantly lower than those found in raw wastewaters from MSW landfills. As described in Section [VII] of today's notice, EPA proposes to establish equivalent effluent limitations for all Subtitle D non-hazardous landfills.

EPA also examined wastewater at non-hazardous landfill facilities for the presence of dioxins and furans to determine whether these analytes should be proposed for regulation. Scientific study has identified that there are 210 isomers of chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF). Dioxins and furans are formed as by-products in

many industrial operations including petroleum refining, pesticide and herbicide production, paper bleaching, and production of materials involving chlorinated compounds. Dioxins and furans are not water-soluble and are not expected to leach out of non-hazardous landfills in significant quantities. EPA is primarily concerned with the 2,3,7,8-substituted congeners, of which 2,3,7,8-TCDD is considered to be the most toxic and is the only one that is a priority pollutant. Non-2,3,7,8-substituted congeners are believed to be less toxic in part because it appears that they are not absorbed by living organisms.

As part of EPA sampling episodes at 13 Non-Hazardous landfills, raw wastewater samples were collected and analyzed for a total of 17 congeners of dioxins and furans. Additional raw leachate data were analyzed from ash monofills in previous EPA studies. EPA found low levels of only three congeners, OCDD, HpCDD, and HxCDD, in raw wastewaters at several landfills. All observed concentrations of dioxins/furans in raw, untreated wastewater were well below the Universal Treatment Standards proposed for FO39 wastes (multi-source leachate) in 40 CFR 268.1 which establish minimum concentration-based standards based on an acceptable level of risk. At the concentrations found in raw landfill wastewaters, dioxins and furans are expected to partition to the biological sludge as part of the proposed BPT/BAT treatment technologies. Partitioning of dioxins/furans to the sludge was included in the evaluation of treatment benefits and water quality impacts. The most toxic dioxin congener, 2,3,7,8-TCDD, was never detected in raw wastewater at a Subtitle D Landfill.

Based on this review of all available data, the Agency is not proposing to establish effluent limitations for dioxins and furans because the concentrations of the congeners that were detected in raw untreated leachate were found at very low levels, often approaching background levels and already below Universal Treatment Standards. Additionally, the most toxic congener, 2,3,7,8-TCDD, was never detected in untreated raw leachate. EPA sampling data and calculations conclude that the concentrations of dioxins and furans present in the wastewater will not prevent the sludge from being redeposited in a nonhazardous landfill.

3. Raw Wastewater at Subtitle C Hazardous Landfills

Raw wastewaters from Subtitle C Hazardous landfills were also characterized through EPA sampling episodes and industry-supplied data obtained through the EPA 308 Questionnaires. Wastewater generated at Subtitle C hazardous landfills contained a wide range of conventional, toxic, and nonconventional pollutants at treatable levels. There was a significant increase in the number of pollutants found in raw wastewaters at hazardous facilities compared to non-hazardous landfills. Pollutants which were common to both untreated nonhazardous and hazardous wastewaters were generally an order of magnitude higher in hazardous landfill wastewater. The list of pollutants of interest for the Subtitle C Hazardous Landfill Subcategory, which includes 80 parameters, reflects the more toxic nature of hazardous landfill wastewater and the wide range of industrial waste sources.

Pollutants typical of raw leachate from hazardous facilities included higher levels of arsenic, chromium, copper, nickel and zinc than found at non-hazardous facilities. However, cadmium, lead and mercury were not detected at treatable concentrations in the raw wastewater for any of the hazardous landfills sampled during EPA sampling episodes.

EPA identified 65 pollutants of interest for Subtitle C hazardous landfills including: 11 conventional/nonconventional pollutants, 13 metals, 37 organics/pesticides/herbicides, and four dioxins/furans. Two hundred fifty pollutants were never detected in EPA sampling episodes and approximately 155 pollutants were detected but were not considered to be present at treatable levels. A list of the pollutants and sampling results may be found in the Technical Development Document.

EPA also examined wastewater at hazardous landfill facilities for the presence of dioxins and furans to determine whether these analytes should be proposed for regulation. As part of EPA sampling episodes at two in-scope Subtitle C landfills and two in-scope pre-1980 industrial landfills, raw leachate samples were collected and analyzed for 17 congeners of dioxins and furans. Again, EPA did not detect the most toxic dioxin congener, 2,3,7,8-TCDD, at an in-scope hazardous/industrial landfill. EPA did find low levels of several congeners in raw wastewaters at several landfills. Low levels of four congeners, OCDD, OCDF, HpCDD, and HpCDF, were detected in over half of the landfills sampled. However, all concentrations of dioxins/furans in raw, untreated wastewater were well below the Universal Treatment Standards proposed for FO39 wastes (multi-source leachate) in 40 CFR 268.1 which establish minimum concentration-based standards based on an acceptable level of risk. At the concentrations found in raw landfill wastewaters, dioxins and furans are expected to partition to the biological sludge as part of the proposed BPT/BAT/PSES treatment technologies. Partitioning of dioxins/furans to the sludge was included in the evaluation of treatment benefits and water quality impacts.

Based on a review of all available data, the Agency is not proposing to establish effluent limitations for dioxins and furans for the same reasons it is not proposing limitations and standards for these pollutants in wastewater at non-hazardous landfills.

C. Wastewater Flow and Discharge

1. Wastewater Flow and Discharge at Subtitle D Non-Hazardous Landfills

Approximately 6.7 billion gallons of in-scope wastewater were generated at non-hazardous landfills in 1992. As mentioned previously, flows collected from leachate collection systems are the primary source of wastewater, accounting for over 95 percent of the in-scope wastewaters.

Landfill facilities have several options for the discharge of their wastewaters. EPA estimates that there are 158 Subtitle D Non-hazardous facilities discharging wastewater directly into a receiving stream or body of water, accounting for 1.2 billion gallons per year. In addition, there are 762 facilities discharging wastewater indirectly to a POTW, accounting for 4.6 billion gallons per year.

Also, there are a number of facilities which use treatment and disposal practices that result in no discharge of wastewater to surface waters. The Agency estimates that there are 343 of these ''zero or alternative discharge'' facilities. Disposal options resulting in no discharge for landfill generated wastewater include off-site treatment at another landfill wastewater treatment system or a Centralized Waste Treatment facility, deep well injection, incineration, evaporation, land application and recirculation.

The recirculation of leachate is generally believed to encourage the biological activity occurring in the landfill and accelerate the stabilization of the waste. The recirculation of landfill leachate is not prohibited by federal regulations, although many States have prohibited the practice. EPA estimates that 350 million gallons per year are recirculated back to Subtitle D non-hazardous landfill units.

2. Wastewater Flow and Discharge at Subtitle C Hazardous Landfills

Approximately 367 million gallons of in-scope wastewater were generated at hazardous landfills in 1992. In-scope wastewaters do not include non-contact stormwater or contaminated groundwater.

Landfill facilities have several options for the discharge of their wastewaters. EPA's survey of the landfills industry did not identify any hazardous landfills covered by the proposed guideline which discharge in-scope wastewaters directly to surface waters. EPA estimates that there are six facilities discharging wastewater indirectly to a POTW, accounting for 40 million gallons per year.

The Agency estimates that 141 hazardous landfill facilities utilize zero or alternative-discharge disposal options. EPA estimates that 103 facilities ship wastewater off-site for treatment, often to a treatment plant located at another landfill or to a Centralized Waste Treatment facility. Shipping off-site accounts for eleven million gallons per year of wastewater. Another 37 facilities utilize underground injection for disposal of their wastewaters, accounting for 315 million gallons per year; and one facility solidifies less than 0.1 million gallons per year of landfill wastewater.

IX. Development of Effluent Limitations Guidelines and Standards

A. Description of Available Technologies

There are a large number of different wastewater treatment systems in use at landfills. The treatment technologies described below provide some indication of the range of wastewater treatment systems observed at landfill wastewater treatment plants. In-operation wastewater treatment technologies include physical/chemical pollutant removal systems and biological removal systems. Based on information obtained from the Detailed Questionnaires and engineering site and sampling visits described above, EPA concluded that a number of treatment systems currently in place need to be upgraded to improve effectiveness and remove additional pollutants.

Among the physical/chemical treatment technologies in use are:

- *Equalization tanks.* Equalization dampens variation in hydraulic and pollutant loadings, thereby reducing shock loads and increasing treatment facility performance;
- *Neutralization.* Neutralization dampens pH variation prior to treatment or discharge;
- *Coagulation/Flocculation.* Coagulation/flocculation provides additional pollutant removal through aggregation of colloidal solids;
- *Gravity Separation.* Gravity-assisted separation allows suspended matter, heavier than water, to become quiescent and settle; and free oils, lighter than water, to become quiescent and float;
- *Emulsion Breaking.* The addition of a de-emulsifiers (heat, acid, metal coagulants, and clays) break down emulsions to produces a mixture of water and free oil and/or an oily floc;
- *Chemical Precipitation.* The addition of chemicals to wastewater to convert soluble metal salts to insoluble metal oxides which are then removed by filtration;
- *Chemical Oxidation/Reduction.* By chemical addition, the structure of pollutants are changed so as to disinfect, increase biodegradation and adsorption, or convert pollutants to terminal end products;
- *Air/Steam Stripping.* Air/Steam stripping involves the removal of pollutants from wastewater by the transfer of volatile compounds from the liquid phase to a gas stream;
- *Multimedia/Sand Filtration.* Multimedia/sand filtration involves a fixed (gravity or pressure) or moving bed of porous media that traps and removes suspended solids from water passing though the media;
- *Ultrafiltration.* Extremely fine grade filters are used to remove organic pollutants from wastewater according to the organic molecule size;
- *Reverse Osmosis.* Reverse osmosis relies on differences in dissolved solids concentrations and selective semipermeable membranes to allow for the concentration of dissolved inorganic pollutants;
- *Fabric Filters.* Fabric filters screen suspended matter by means of a cloth or paper barrier;
- *Carbon Adsorption.* In this process, wastewater is passed over a medium of activated carbon which adsorbs certain pollutants; and
- *Ion Exchange.* The use of certain resins in contact with wastewater removes contaminants of similar charge.

Biological treatment technologies in use are:

- *Aerobic Systems.* Aerobic systems utilize an acclimated community of aerobic microorganisms to degrade, coagulate, and remove organic and other contaminants;
- *Activated Sludge.* Activated sludge is a continuous flow, aerobic biological treatment process which employs suspended-growth aerobic microorganisms to biodegrade organic contaminants;
- *Anaerobic Systems.* Anaerobic systems involve the conversion of organic matter in wastewater into methane and carbon dioxide by anaerobic microorganisms (methanogens);
- *Facultative Systems.* Facultative systems stabilize wastes by incorporating a combination of aerobic, anaerobic, and facultative (thriving in either aerobic or anaerobic conditions) microorganisms;
- *Rotating Biological Contactors.* Rotating biological contactors (RBCs) employ a fixed-film aerobic biological system adhering to a rigid media mounted on a horizontal, rotating shaft;
- *Trickling Filters.* In this process, wastewater passes over a structure packed with an inert medium (e.g. rock, wood, plastic) coated with a biological film capable of absorbing and degrading organic pollutants;
- *Sequential Batch Reactors.* A sequence of batch operations in a single reactor containing acclimated microorganisms is used to degrade organic material. The batch process allows for equalization, aeration, and clarification in a single tank;
- *Powdered Activated Carbon Biological Treatment.* The addition of granular activated carbon to biological treatment systems enhances the removal of certain organic pollutants;
- *Nitrification Systems.* These systems involve nitrifying bacteria in order to convert ammonia-nitrogen compounds to less toxic, nitrate-nitrite compounds;
- *Denitrification Systems.* These systems convert nitrate-nitrite to nitrogen gas under anoxic conditions; and
- *Wetlands Treatment.* These systems employ natural or man-made wetlands systems which treat wastewater through utilizing natural processes of sedimentation, adsorption, and organic degradation.

The treatment sequence employed at any particular facility may vary with the character of the wastewater generated at the landfill. The optimal treatment system at a facility depends upon many factors including permit requirements, design considerations, landfill acceptance criteria, and management practices. Various forms of equalization and aerobic biological systems were the most widely-found treatment technology in the landfills industry, including aerated lagoons, activated sludge systems, and sequential batch reactors. Biological systems in the landfill industry generally utilized high retention times to enhance performance by reducing variations in raw wastewater flow and pollutant loads.

B. Technology Options Considered for Basis of Regulation

This section explains how EPA selected the effluent limitations and standards proposed today for the Subtitle C Landfill and Subtitle D Landfill Subcategories. To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily effluent data collected from the Detailed Monitoring Questionnaire and EPA's Wastewater Sampling Program. This database is used to support the BPT, BCT, BAT, NSPS, PSES, and PSNS effluent limitations and standards.

The effluent limitations and pretreatment standards EPA is proposing to establish today are based on well-designed, well-operated systems. Below is a summary of the technology bases for the proposed effluent limitations and pretreatment standards in each subcategory. When final guidelines are promulgated, a landfill operator is free to use any wastewater treatment technology at the facility so long as the numerical discharge limits are achieved.

1. Best Practicable Control Technology Currently Available (BPT)

a. Introduction. EPA today proposes BPT effluent limitations for the two discharge subcategories for the Landfills Point Source Category. The BPT effluent limitations proposed today would control identified conventional, priority, and non-conventional pollutants when discharged from landfill facilities. For further discussion on the basis for the limitations and technologies selected see the Technical Development Document.

As previously discussed, Section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of ''best practicable control technology currently available for classes and categories of point sources.'' The Senate Report for the 1972 amendments to the CWA explained how EPA must establish BPT effluent reduction levels. Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied. See *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972*, U.S. Senate Committee of Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost reasonable assessment for BPT limitations. In determining the BPT limits, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are ''wholly out of proportion to the costs of achieving such marginal level of reduction.'' See *Legislative History*, op. cit. p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

b. BPT Technology Options Considered for the Non-Hazardous Landfills Subcategory. In the Agency's engineering assessment of the best practicable control technology currently available for treatment of wastewaters from landfills, EPA first considered three technologies commonly in use by landfills and other industries as options for BPT. These technology options were chemical precipitation, biological treatment, and multimedia filtration. EPA removed chemical precipitation from further consideration as a BPT treatment option for the following reason. While chemical precipitation is an effective treatment technology for the removal of metals, non-hazardous landfills typically have low concentration of metals in treatment system influent wastewater. Observed metals concentrations were typically not found at levels which would inhibit biological treatment or that could be effectively removed by a chemical precipitation unit.

- Option I—Biological Treatment. EPA first assessed the pollutant removal performance of biological treatment. EPA selected this as Option I due to its effectiveness in removing the large organic loads commonly associated with leachate. BPT Option I consists of aerated equalization followed by biological treatment. Various types of biological treatment such as activated sludge, aerated lagoons, and anaerobic and aerobic biological towers or fixed film reactors were included in the calculation of limits for this option. The costing for Option I was based on the cost of aerated equalization followed by an extended aeration activated sludge system and clarification, including sludge dewatering. Approximately half of the direct discharging municipal solid waste landfills employed some form of biological treatment, but only 15 percent had a combination of equalization and biological treatment.
- Option II—Biological Treatment and Multimedia Filtration. The second technology option considered for BPT treatment of non-hazardous landfill wastewater was aerated equalization and biological treatment as described in Option I, followed by multimedia filtration. Approximately 11 percent of the direct discharging municipal facilities used the technology described in Option II.

EPA proposes to adopt BPT effluent limitations for the Non-Hazardous Landfills Subcategory based on Option II because of the proven ability of biological treatment systems in controlling organics, and because of the effectiveness of multimedia filtration in removing TSS which may remain after biological treatment. EPA's decision to base BPT limitations on Option II treatment reflects primarily two factors: (1) the degree of effluent reductions attainable and (2) the total cost of the proposed treatment technologies in relation to the effluent reductions achieved.

No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors. Neither the age nor the size of the landfill facility will directly affect the treatability of the landfill wastewaters. For the non-hazardous landfills, the most pertinent factors for establishing the limitations are costs of treatment and the level of effluent reductions obtainable.

EPA has selected Option II based on the comparison of the two options in terms of total costs of achieving the effluent reductions, pounds of pollutant removals, economic impacts, and general environmental effects of the reduced pollutant discharges. BPT Option II removed 85,000 pounds more of conventional pollutants than Option

I with only a moderate, associated cost increase.

Finally, EPA also looked at the costs of all options to determine the economic impact that this proposal would have on the landfill industry. EPA's assessment showed that under either option there were significant economic impacts on only two facilities. Further discussion on the economic impact analysis can be found in Section XI of today's notice.

EPA identified 34 pollutants of interest for the Non-Hazardous Subcategory as explained previously. EPA is proposing to regulate the following pollutants under BPT, BAT, and NSPS for direct discharging non-hazardous landfills: BOD_5, TSS, pH, ammonia, alpha terpineol, benzoic acid, p-cresol, phenol, toluene, and zinc.

c. BPT Technology Options Considered for the Hazardous Landfill Subcategory. EPA's survey of the hazardous landfills industry identified no in-scope respondents who discharge directly to surface water. All of the hazardous landfills within the scope of the proposal are either indirect or zero/alternative dischargers. EPA consequently could not evaluate any treatment systems in place at direct discharging hazardous landfills for establishing BPT effluent limitations. Therefore, EPA relied on information and data from widely available treatment technologies in use at hazardous landfill facilities discharging indirectly and at non-hazardous landfills discharging directly—so-called ''technology transfer.'' EPA based BPT limits for hazardous landfills on chemical precipitation to achieve metals removals and secondary biological treatment to achieve organics removals.

In this instance, EPA concluded that the technology in place at some indirect hazardous landfills is appropriate to use as the basis for regulation of direct dischargers. EPA would expect that the wastewater characteristics from direct discharge hazardous waste landfills be similar to the wastewater from indirect discharge hazardous waste landfills. The technologies in place at indirect dischargers selected for the basis of regulation included chemical precipitation for metals removal and secondary biological treatment for removals of organics. Secondary biological treatment was selected as the basis for BPT, BAT, and NSPS regulation for non-hazardous landfills, and EPA believes that secondary biological treatment is also appropriate for the treatment of hazardous landfill leachate. With the exception of conventionals such as BOD_5 and TSS, the treatment systems in place at indirect hazardous facilities achieved low effluent concentrations as a result of average removals of 88 to 98 percent of organic toxic pollutants, and 55 to 80 percent of metal pollutants. Because of the ability of the POTW to treat conventionals such as BOD_5 and TSS, biological treatment systems discharging indirectly are not necessarily operated for optimal control of these parameters. Therefore, because the performance of biological treatment systems for conventionals is well documented, EPA transferred the limits for conventionals from well operated biological treatment systems in place at non-hazardous landfills.

EPA considered three potential technology options for establishing BPT effluent limitations for the Hazardous Landfill Subcategory. These technology options all included aerated equalization, and consisted of chemical precipitation, biological treatment, and zero or alternative discharge. EPA evaluated chemical precipitation as a treatment technology because of metals concentrations typically found in hazardous landfill leachate and the efficient metals removals achieved through chemical precipitation. EPA also evaluated biological treatment as an appropriate technology because of its ability to remove organic loads present in the leachate. Finally, EPA considered a zero or alternative discharge option as a potential BPT requirement because a significant segment of the industry is currently not discharging wastewaters to surface waters or to POTWs. The zero or alternative disposal option would require facilities to dispose of their wastewater in a manner that would not result in wastewater discharge to a surface water or a POTW.

Methods of achieving zero or alternative discharge currently in use by hazardous landfills are deep well injection, solidification, and contract hauling of wastewater to a Centralized Wastes Treatment (CWT) facility or to a landfill wastewater treatment facility. Thirty-seven facilities are estimated to inject landfill wastewaters underground on-site, 103 facilities send their wastewater to a CWT or landfill treatment system, and one facility solidifies wastewater.

EPA has tentatively determined that it should not propose zero or alternative discharge requirements because, for the industry as a whole, zero or alternative discharge options are either not viable or the cost is wholly disproportionate to the benefits and thus it is not ''practicable.''

One demonstrated alternative disposal option for large wastewater flows is underground injection. However, this is not considered a practically available option on a nationwide basis because it is not allowed in many geographic regions of the country where landfills may be located.

The second widely used disposal option involves contract hauling landfill wastewater to a CWT. EPA's survey demonstrated that only landfills with relatively low flows (under 500 g.p.d.) currently contract haul their wastewater to a CWT. The costs of contract hauling are directly proportional to the volume and distance over which the wastewater must be transported, generally making it excessively costly to send large wastewater flows to a CWT, particularly if it is not located nearby. EPA evaluated the cost of requiring all hazardous landfills to achieve zero or alternative discharge status. For the purposes of costing, EPA assumed that a facility would have to contract haul wastewater off-site because it may be impossible to pursue other zero or alternative discharge options. EPA concluded that the cost of contract hauling off-site for *high flow* facilities was unreasonable high and disproportionate to the removals potentially achieved. In addition, EPA concluded that the wastewater shipped to a CWT will typically receive treatment equivalent to that proposed today, and that zero/alternative discharge requirements would result in additional costs to discharge without greater removals for hazardous landfill wastewaters.

Based on the characteristics of hazardous landfill leachate and on an evaluation of appropriate technology options, the Agency selected aerated equalization followed by chemical precipitation and biological treatment as BPT technology for the Hazardous Landfill Subcategory. EPA relied on data from two facilities employing variations of this technology to calculate the proposed BPT limits for toxic pollutants. One facility employed equalization and a chemical precipitation unit followed by an activated sludge system. The second facility used equalization tanks followed by a sequential batch reactor which was able to achieve metals reductions. Both of these systems were indirect dischargers, as stated above. In the case of BPT regulation for conventional pollutants, EPA concluded that establishing limits based on indirect discharging treatment systems was not appropriate because indirect discharging treatment systems are generally not operated for optimal control of conventional pollutants which are amenable to treatment in a POTW. Therefore, in establishing limits

for conventional pollutants, EPA is proposing to establish BPT limitations equal to those established for non-hazardous landfills. For a discussion of the costs and economic impact of the treatment options considered by the Agency, see Section XI.

2. Best Conventional Pollutant Control Technology (BCT)

a. Introduction. In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) A POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

b. Rationale for Setting BCT Equivalent to BPT. In today's proposal, EPA is proposing to establish BCT effluent limitations guidelines equivalent to the BPT guidelines for the conventional pollutants for both subcategories. In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. In each subcategory, EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines.

3. Best Available Technology Economically Achievable (BAT)

a. Introduction. EPA today is proposing BAT effluent limitations for both subcategories in the Landfills Category based on the same technologies selected for BPT. The BAT effluent limitations proposed today would control identified priority and non-conventional pollutants discharged from facilities.

EPA has not identified any more stringent treatment technology option which it considered to represent BAT level of control applicable to facilities in this industry.

b. Rationale for Setting BAT Equivalent to BPT for the Non-Hazardous Landfill Subcategory. EPA evaluated reverse osmosis technology as a potential option for establishing BAT effluent limits more stringent than BPT for the control of toxic pollutants. Reverse osmosis was selected for evaluation because of its effective control of a wide variety of toxic pollutants in addition to controlling conventional and non-conventional parameters.

EPA evaluated BAT treatment options as an increment to the baseline treatment technology used to develop BPT limits. Therefore, the BAT Option III consisted of BPT Option II (biological treatment followed by multimedia filtration) followed by a single-stage reverse osmosis unit.

After an assessment of costs and pollutant reductions associated with reverse osmosis, EPA has concluded that it should not propose BAT limits based on more stringent treatment technology than the BPT technology. EPA concluded that a biological system followed by multimedia filtration would remove the majority of toxic pollutants, leaving the single-stage reverse osmosis to treat the very low levels of pollutants that remained. In the Agency's analysis, BPT Option II removed 6,800 toxic pounds whereas BAT Option III removed 8,000 toxic pounds. EPA's economic assessment showed that BAT Option III had significantly higher annual compliance costs than the other options evaluated and resulted in six additional facilities experiencing moderate economic impacts (refer to Section XI). In addition, establishment of BAT Option III would not result in effluent limitations significantly more stringent that those established under BAT Option II, which is currently achieving very low Long-Term Average (LTA) effluent concentrations. Therefore, the Agency questioned whether the small additional removal of toxic pounds achieved by BAT Option III were justified by the large incremental cost for the reverse osmosis treatment system. It should be noted that reverse osmosis was much more effective at removing the often high quantities of dissolved metals such as iron, manganese and aluminum. However, these parameters were not included in the calculation of toxic pounds due to their use as treatment chemicals. EPA is requesting comment on whether it should base BAT limits on reverse osmosis because of the additional removals obtained. For further discussion of the economic impacts and costs of this option, see the discussion in Section [XI].

c. Rationale for Setting BAT Equivalent to BPT for the Hazardous Landfill Subcategory. As stated in the BPT analysis, EPA's survey of the hazardous landfills industry identified no in-scope respondents which were classified as direct dischargers. All of the hazardous landfills in the EPA survey were indirect or zero or alternative dischargers. Therefore, the Agency based BPT limitations on technology transfer and treatment systems in place for indirect dischargers. In EPA's engineering assessment of the possible BAT technology for direct discharging hazardous facilities, EPA evaluated the same three potential technology options as those evaluated for BPT for the Hazardous Landfill Subcategory. These technology options were chemical precipitation, biological treatment, and zero or alternative discharge as explained above. EPA has identified no other technologies that would represent BAT level of control for this industry.

EPA determined that it should establish BAT limits based on the same technology evaluated for BPT limits. As explained above, zero or alternative discharge is not an available alternative.

4. New Source Performance Standards (NSPS)

a. Introduction. As previously noted, under Section 306 of the Act, new industrial direct dischargers must comply with standards which reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. Therefore, Congress directed EPA, in establishing NSPS, to consider the best demonstrated process changes, in-plant controls, operating methods and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

b. Rationale for Setting NSPS Equivalent to BPT/BCT/BAT. EPA proposes New Source Performance Standards (NSPS) that would control the same conventional, priority, and non-conventional pollutants proposed for control by the BPT/BCT/BAT effluent limitations guidelines. The conventional treatment technologies used to control pollutants at existing

facilities are fully applicable to new facilities. Furthermore, EPA has not identified any other technologies or combinations of technologies that are demonstrated for new sources that are different from those used to establish BPT/BCT/BAT for existing sources. Therefore, EPA proposes NSPS limitations that are identical to those proposed in each subcategory for BPT/BCT/BAT. Again, the Agency is requesting comments to provide information and data on other treatment systems that may be pertinent to the development of standards for this industry.

5. Pretreatment Standards for Existing Sources (PSES)

a. Introduction. Section 307(b) of the Act requires EPA to promulgate pretreatment standards to prevent pass-through of pollutants from POTWs to waters of the U.S. or to prevent pollutants from interfering with the operation of POTWs. After a thorough analysis of indirect discharging landfills in the EPA database, EPA has decided not to propose PSES for the Non-Hazardous Landfill Subcategory for the reasons explained in more detail below. However, EPA does propose to establish PSES for the Hazardous Landfill Subcategory based on aerated equalization, chemical precipitation and biological treatment technology.

b. Pass-Through Analysis. Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by an industry pass through a POTW or interfere with the POTW operation or sludge disposal practices. In determining whether pollutants pass through a POTW, the Agency compares the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) that wastewater treatment performance for indirect dischargers be equivalent to that for direct dischargers and (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by the POTW with the mass or concentration of pollutants discharged by a BAT facility, EPA compares the percentage of the pollutants removed by the proposed treatment system with the POTW removal. EPA takes this approach because a comparison of mass or concentration of pollutants in a POTW effluent with pollutants in a BAT facility's effluent would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the pollutants in the POTW effluent to lower concentrations from the addition of large amounts of non-industrial wastewater.

For past effluent guidelines, a study of 50 representative POTWs was used for the pass-through analysis. Because the data collected for evaluating POTW removals included influent levels of pollutants that were close to the detection limit, the POTW data were edited to eliminate low influent concentration levels. For analytes that included a combination of high and low influent concentrations, the data was edited to eliminate all influent values, and corresponding effluent values, less than 10 times the minimum level. For analytes where no influent concentrations were greater than 10 times the minimum level, all influent values less than five times the minimum level and the corresponding effluent values were eliminated. For analytes where no influent concentration was greater than five times the minimum level, the data was edited to eliminate all influent concentrations, and corresponding effluent values, less than 20 µg/l. These editing rules were used to allow for the possibility that low POTW removal simply reflected the low influent levels.

EPA then averaged the remaining influent data and the remaining effluent data from the 50 POTW database. The percent removals achieved for each pollutant was determined from these averaged influent and effluent levels. This percent removal was then compared to the percent removal for the BAT option treatment technology. Due to the large number of pollutants applicable for this industry, additional data from the Risk Reduction Engineering Laboratory (RREL) database was used to augment the POTW database for the pollutants for which the 50 POTW Study did not cover. For a more detailed description of the pass-through analysis, see the Technical Development Document.

c. Rationale for Not Proposing PSES for the Non-Hazardous Landfill Subcategory. The Agency today is not proposing to establish pretreatment standards for existing sources (PSES) for the Non-Hazardous Landfill Subcategory. The Agency decided not to propose PSES for this subcategory after an assessment of the effect of landfill leachate on receiving POTWs. EPA looked at three measures of effects on POTWs: biological inhibition levels; contamination of POTW biosolids; and pass-through. Only one of these, the pass-through analysis, would support establishing pretreatment standards, and then only in the case of a single pollutant, ammonia.

With respect to biological inhibition, EPA found that typical concentrations of raw leachate were below published biological inhibition levels. Inhibition levels are concentration ranges of certain pollutants which may upset or interfere with the operation of a biological treatment system. In the evaluation of landfill wastewater data, EPA determined that the majority of pollutants typically found in raw leachate were at levels comparable to wastewater typically found at the headworks of a POTW.

Further, EPA also projected that there would not be contamination problems of POTW biosolids as a result of treating landfill leachate so as to prevent use or disposal of its sewage sludge. Furthermore, in EPA's study of the indirect dischargers, EPA found no documented persistent problems with POTW upsets as a result of wastewater from non-hazardous facilities. EPA is soliciting information on POTW upsets or POTW sludge contamination problems from accepting landfill leachate.

Finally, EPA conducted a pass-through analysis on the pollutants proposed to be regulated under BPT/BAT for non-hazardous landfills to determine if the Agency should establish pretreatment standards for any pollutant. (The pass-through analysis is not applicable to conventional parameters such as BOD_5 and TSS.) The results showed that only one regulated pollutant, ammonia, appeared to ''pass-through'' a POTW. However, upon further evaluation, the Agency concluded that it should not propose pretreatment standards for ammonia as explained below. The Agency is soliciting comments and information on its decision not to propose pretreatment standards for non-hazardous landfills. Specifically, EPA would like information on the levels of ammonia present in landfill wastewaters, and on any problems experienced by POTWs due to the acceptance of landfill leachate with high ammonia concentrations.

The Agency evaluated a number of considerations in addition to the pass-through analysis to determine the need for ammonia pretreatment standards. In part, this reflects the unique properties of ammonia and its effects on receiving streams and of the treatment achieved in a POTW. As previously explained, the pass-through analysis is based on a comparison of the performance of representative POTWs achieving secondary treatment and the performance of direct dischargers meeting limits achieved by BAT technology. In the case of ammonia, POTWs generally achieve 60 percent ammonia removal through secondary treatment. However, many POTWs have installed additional treatment specifically for the control of ammonia and typically achieve removals in excess of 95 percent—much higher than the 60 percent removal used in the pass-through analysis. The treatment systems selected as the basis for the proposed BPT/BAT limits for direct dischargers achieved average ammonia removals of 81 percent. Thus, while ammonia would pass through POTWs as tested by the removals (60 percent) achieved in EPA's 50–POTW study, it does not pass through those POTWs with additional installed ammonia control technology (95 percent removal).

Consequently, EPA did consider establishing pretreatment standards for ammonia for indirect dischargers whose POTWs do not have nitrification or other advanced control of ammonia. However, EPA tentatively rejected this option as not needed because, as described below, ammonia is either adequately controlled by local limits or the ammonia concentrations in leachate typically discharged to POTWs are within the range of concentrations typically found at the headworks to a POTW. Nevertheless, EPA will further consider this issue and request comment on whether to establish ammonia pretreatment standards equivalent to those proposed for direct dischargers. EPA is requesting additional data pertinent to this issue from POTWs and indirect discharging landfills. If it is determined that, based on comments received by the Agency, EPA should establish pretreatment standards for ammonia, EPA would propose to establish pretreatment standards for ammonia equivalent to those proposed today for direct discharging facilities.

In order to determine the need for ammonia pretreatment standards for the landfills industry, EPA considered the following factors: ''typical'' ammonia concentrations of raw leachate, ''typical'' ammonia concentrations at the headworks of a POTW, the ammonia concentrations currently being discharged to POTWs by landfills, national estimates of ammonia loads discharged to POTWs and to receiving streams, as well as the economic costs, of establishing pretreatment standards for ammonia.

As discussed previously, EPA found no documented persistent problems with POTW upsets as a result of accepting landfill generated wastewater. EPA is soliciting comment specifically with regard to problems associated with any ammonia discharges in landfill leachate.

In order to evaluate ammonia wastewater concentrations, EPA focused primarily on the means, medians, and 99th percentile of the data collected. For raw wastewater (including all direct and indirect discharging facilities), EPA found that the median concentration of ammonia in raw landfill leachate was 82 mg/l, and that the average concentration was 240 mg/l. Additionally, there were several notable outliers which contained high levels of ammonia in raw leachate due to site specific characteristics of the landfill.

In terms of current treatment performance for landfills discharging to POTWs, 99 percent of the landfill facilities are currently discharging wastewater which contains less than 90 mg/l of ammonia. Of the indirect landfills which provided data, one facility was discharging 1,018 mg/l of ammonia to a 114 MGD POTW which currently has ammonia control (nitrification) in place. In general, POTWs with nitrification achieve over 95 percent removal of ammonia. The remainder of the landfills discharged an average concentration of 37 mg/l of ammonia to POTWs, with one-half of the facilities discharging less than 32 mg/l. In comparison, typical ammonia concentrations in raw domestic sewage range from one to 67 mg/l. Therefore, with the exception of the outlier noted above, the average concentration of ammonia in leachate discharged to POTWs was within the range of wastewater typically accepted at the headworks to a POTW, although it should be noted that the upper ranges of leachate concentrations were higher than the upper ranges observed in domestic sewage. This evidence supports the conclusion that, in all but a handfull of cases, ammonia is not passing through POTWs. In most instances, observed ammonia discharge levels to POTWs fall within a POTWs treatment capabilities. Therefore, EPA does not believe that national pretreatment standards are necessary.

Additionally, EPA evaluated total wastewater flows and loads of ammonia to receiving streams associated with non-hazardous landfill indirect dischargers. EPA estimated that the non-hazardous landfill industry discharges 3.2 million pounds per year of ammonia to POTWs, which results in 1.3 million pounds per year being discharged to receiving streams, assuming that the POTWs have secondary treatment but do not have additional treatment for ammonia control. (As noted above, EPA is aware that many POTWs do have additional ammonia control.) Over 65 percent of the landfills discharge less than 10 pounds per day to the POTW (3,500 pounds/year), which results in discharging less than four pounds per day (1,400 pounds/year) to receiving streams, again assuming secondary treatment only. In light of existing ammonia control, actual discharges to receiving streams are likely to be even smaller.

EPA did, however, evaluate the economic costs of options for PSES for ammonia. EPA's economic assessment of these showed that ammonia removal options generally achieved removals at very high cost given the small reduction in quantity discharged. For the control of ammonia there are two technology options available in the landfill industry.

The first available option is biological treatment. EPA evaluated PSES Option I equivalent to BPT/BAT Option I, which was equalization plus biological treatment. This option had a total annualized cost of $28.2 million (1992 dollars) and had an average cost-effectiveness of $1,072/lbs-equivalent (1981 dollars). The second technology option available for the control of ammonia is ammonia stripping with appropriate air pollution controls. However, this technology is not demonstrated within the landfills industry, the costs are significantly higher than biological treatment evaluated as PSES Option I, and there are no pollutant removals achieved incremental to PSES Option I.

In summary, EPA concludes that landfills typically discharge wastewater to POTWs containing ammonia concentrations comparable to that of raw domestic sewage and that the POTWs can adequately treat this wastewater. Further, POTWs retain the ability to establish local limits on ammonia where necessary because ammonia discharges are often a water quality issue. Where such discharges are harmful is dependent upon localized conditions such as the pH and temperature of the receiving stream. As a result, in these cases where it is

necessary to protect water quality, many POTWs have established local limits to control ammonia.

EPA has analyzed the impact of ammonia discharges from landfills on receiving streams, and potential environmental benefits achieved through establishing pretreatment standards for ammonia. Based on its assessment, EPA concluded that ammonia removals achieved by national pretreatment standards would provide little, if any improvement in water quality. Consequently, for all the reasons explained above, EPA concluded that there are minimal benefits to be achieved through establishing national pretreatment standards for ammonia.

d. Technology Options Considered for PSES for Hazardous Landfill Subcategory. EPA proposes to establish pretreatment standards for existing sources for the Hazardous Landfill Subcategory based on the same technologies as proposed for BPT, BAT, and NSPS for this subcategory. These standards would apply to existing facilities in the Hazardous Subcategory that discharge wastewater to publicly-owned treatment works (POTWs) and would prevent pass-through of pollutants and help control sludge contamination. Based on EPA's pass-through analysis, four of the pollutants of concern that may be discharged by hazardous landfills would pass through POTWs and are proposed for regulation. These are ammonia, alpha terpineol, aniline, benzoic acid, p-cresol, and toluene. Nine of the pollutants proposed to be regulated under BPT, BAT, and NSPS would not pass through a typical POTW. For a more detailed analysis of the pass-through, refer to the Technical Development Document. According to EPA's database, all existing indirect dischargers already meet this baseline standard; and therefore, no incremental costs, benefits, or economic impacts would be realized. As discussed above, the Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards for hazardous landfills.

6. Pretreatment Standards for New Sources (PSNS)

a. Introduction. Section 307 of the Act requires EPA to promulgate both pretreatment standards for new sources (PSNS) and new source performance standards (NSPS). New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies including: process changes, in-facility controls, and end-of-pipe treatment technologies.

b. Rationale for Setting PSNS Equivalent to PSES for All Subcategories. In today's rule, EPA proposes to establish pretreatment standards for new sources equivalent to the PSES standards for all subcategories. In developing PSNS limits, EPA considered whether there are technologies that achieve greater removals than proposed for PSES which would be appropriate for PSNS. In the Hazardous Subcategory, EPA identified no technology that can achieve greater removals than PSES. In the Non-Hazardous Subcategory, EPA will not establish PSNS limitations for the same rationale for not establishing PSES limits. As discussed above, the Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards for new sources of hazardous landfills.

C. Development of Effluent Limitations

EPA based the proposed effluent limitations and standards in today's notice on widely-recognized statistical procedures for calculating long-term averages and variability factors. The following presents a summary of the statistical methodology used in the calculation of effluent limitations.

Effluent limitations for each subcategory are based on a combination of long-term average effluent values and variability factors that account for variation in day-to-day treatment performance within a treatment plant. The long-term averages are average effluent concentrations that have been achieved by well-operated treatment systems using the processes described in the following section (Treatment Systems Selected for Basis of Regulation). The variability factors are values that represent the ratio of a large value that would be expected to occur only rarely to the long-term average. The purpose of the variability factor is to allow for normal variation in effluent concentrations. A facility that designs and operates its treatment system to achieve a long-term average on a consistent basis should be able to comply with the daily and monthly limitations in the course of normal operations.

The variability factors and long-term averages were developed from a data base composed of individual measurements on treated effluent. A combination of EPA sampling data and industry supplied data was used. While EPA sampling data reflects the performance of a system over a five-day period, industry supplied data (collected through the Detailed Monitoring Questionnaire) reflects up to three years worth of monitoring data. EPA used a combination of EPA and industry supplied data whenever possible in order to better account for the variability of leachate over time.

Daily maximum limits were calculated as follows. A modified delta-lognormal distribution was fitted to daily concentration data from each facility that had enough detected concentration values for parameter estimation. This is the same distributional model used by EPA in the final rulemakings for the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Pesticides Manufacturing categories and the proposed rulemaking for the Pulp and Paper category. This model provided estimates of the long-term average (mean) and daily variability (variance) at a facility. Variability factors, corresponding to the 99th percentile, were then computed for each facility. Data were combined from the selected facilities in each subcategory by finding the median of facility long-term averages and the average of facility variability factors. Finally, the daily maximum limitation for a subcategory was calculated by multiplying the median long-term mean by the average variability factor. The monthly maximum limitation was calculated similarly except that the variability factor corresponding to the 95th percentile of the distribution of monthly averages was used instead of the 99th percentile of daily concentration measurements.

The daily variability factor is defined as the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, or mean, of the distribution. Similarly, the monthly variability factor is defined as the estimated 95th percentile of the distribution of 4-day or 20-day averages (depending on the pollutant parameter) divided by the expected value of the monthly averages.

The modified delta-lognormal distribution models the data as a mixture of non-detect observations and measured values. This distribution was selected because the data for most analytes consisted of a mixture of measured values and non-detects. The modified delta-lognormal distribution assumes that all non-detects have a value equal to the reported detection limit and that the detected values follow a lognormal distribution.

There were several instances where variability factors could not be calculated from the landfills data base because all effluent values were measured at or below the minimum detection level. In these cases,

variability factors were transferred from biological systems used in the final rulemaking of the OCPSF guideline.

D. Treatment Systems Selected for Basis of Regulation

1. BPT for Non-Hazardous Landfills

There were 46 in-scope landfill facilities in the EPA data base that employed various forms of biological treatment considered for BPT. EPA determined an average of the best of these facilities by applying the criteria outlined below.

The first criterion used in the selection of the average of the best facilities was effective treatment of BOD_5. EPA evaluated 25 facilities which provided BOD_5 effluent data to determine treatment performance. Because BPT is based on the effectiveness of biological treatment, facilities which used additional forms of treatment for BOD_5 (other than biological treatment) were eliminated. EPA, therefore, removed two sites using carbon treatment in addition to biological treatment from the list of candidate BPT facilities. EPA eliminated another facility from consideration due to the fact that it used two separate treatment trains in treating its wastewater, one with biological treatment and the other with chemical precipitation, before commingling the streams at the effluent sample point. After the elimination of these three facilities, 22 facilities remained in the EPA non-hazardous landfill data base.

To ensure that the facilities were operating effective biological treatment systems, EPA first evaluated influent concentrations of BOD_5 entering the treatment system. Three facilities had average influent BOD_5 concentrations below 55 mg/l, and were not considered for BPT because the influent concentration was considered to be too low to evaluate removals across the treatment system. Seven other facilities did not supply BOD_5 influent data and were eliminated from the BPT list. Two other facilities were dropped because raw wastewater streams consisted primarily of stormwater or groundwater which were considered dilution flows.

The next requirement for BPT selection in the Non-Hazardous Landfill Subcategory was that the biological treatment system at the facility had to achieve a BOD_5 effluent concentration less than 50 mg/l. Facilities not able to maintain an effluent concentration below 50 mg/l were not considered to be operating their biological system effectively. Three of the remaining 10 facilities did not achieve a BOD_5 effluent concentration of less than 50 mg/l, thus leaving seven facilities in the data base.

The seven facilities which met all of the BPT criteria employed various types of biological treatment systems including activated sludge, sequential batch reactors, aerobic and anaerobic biological towers or fixed film, and aerated ponds or lagoons. Most of the facilities employed equalization tanks in addition to the biological treatment while several facilities also included chemical precipitation and neutralization in their treatment systems. The biological systems were followed by a clarification or sedimentation stage. All seven facilities employing well-operated biological treatment systems were used to calculate the effluent limitations for BOD_5. The treatment system average BOD_5 influent concentrations ranged from 150 mg/l to 7,600 mg/l.

EPA used the data from the seven facilities identified as having good biological treatment systems to calculate the limits for additional pollutant parameters, including alpha terpineol, ammonia, benzoic acid, p-cresol, phenol, toluene and zinc. Because one facility employed air stripping, EPA did not use its data for determining the proposed limit for ammonia or toluene. Many of the facilities selected as BPT did not provide data for all the pollutants identified for regulation by EPA. In these cases, EPA based the limits on the BPT facilities for which data was available.

While the BOD_5 edits discussed above ensure good biological treatment and a basic level of TSS removal, treatment facilities meeting this level may not necessarily be operated for optimal control of TSS. In order to ensure that the TSS data base for setting limitations reflects proper control, additional editing criteria for TSS were established.

Two criteria were used for including TSS performance data. The primary factor in addition to achieving the BOD_5 criteria cited above was that the facility had to employ technology sufficient to ensure adequate control of TSS, namely a sand or multimedia filter. Three of the seven well-operated biological systems used a sand or multimedia filter as a polishing step for additional control of suspended solids prior to discharge.

The second factor EPA considered was whether the treatment system achieved an effluent TSS concentration less than or equal to 100 mg/l. Treatment facilities meeting these criteria were included among the average best existing performers for TSS. One of the three facilities had additional treatment for TSS prior to the filter and was therefore eliminated from consideration in the determination of the TSS limits. The remaining two facilities had TSS effluent concentrations well below 100 mg/l and thus EPA concluded that they should be included among the average, best existing performers for TSS. All of the estimated costs were based on a facility installing aerated equalization tanks followed by an activated sludge biological system and a multimedia filter and included a sludge dewatering system. The cost models are described in detail in the Technical Development Document.

2. Hazardous Landfills

EPA identified only three in-scope respondents in the Hazardous Landfill Subcategory, all of which discharged indirectly to POTWs. The leachate from one of the three facilities was very dilute and required only minimum treatment prior to discharge. This facility was not determined to be one of the best performers in the industry. The two remaining facilities both had extensive treatment systems in place and were selected as the best performers for the subcategory. The treatment at one facility consisted of equalization, a chemical precipitation unit followed by an activated sludge system. The second facility utilized equalization and three sequential batch reactors operated in parallel.

EPA identified 72 pollutants of interest in hazardous landfill wastewater. EPA is proposing to regulate the following pollutants under BPT, BAT, and NSPS for direct discharging hazardous landfills: BOD_5, TSS, pH, ammonia, arsenic, chromium (total), zinc, alpha terpineol, aniline, benzene, benzoic acid, naphthalene, p-cresol, phenol, pyridine, and toluene.

X. Costs and Impacts of Regulatory Alternatives

A. Methodology for Estimating Costs and Pollutant Reductions Achieved by Treatment Technologies

EPA estimated industry-wide compliance costs and pollutant loadings associated with the effluent limitations and standards proposed today using data collected through survey responses, site visits, and sampling episodes. Costs were calculated based on a computerized design and cost model developed for each of the technology options considered. EPA used vendor supplied cost estimates for several technologies which were not available from the computerized model. Current pollutant loads and projected pollutant load reductions were estimated using

treatment data collected through industry provided survey responses and EPA sampling data.

EPA developed industry-wide costs and loads based the obtained from the 252 facilities which received the Detailed Questionnaire. The Detailed Questionnaire recipients were selected from 3,628 screener survey responses, which itself was a subset of the entire landfill population of 10,925. The statistical methodology for this selection is further explained in the Statistical Support Document. EPA calculated costs and loads for each of the 252 questionnaire recipients and then modeled the national population by using statistically calculated survey weights.

EPA evaluated each of the 252 Detailed Questionnaire recipients to determine if the facility would be subject to the proposed limitations and standards and would therefore incur costs as a result of the proposed regulation. One hundred twenty-one of the 252 facilities were not expected to incur costs because:

- 47 facilities indicated that they were zero or alternative dischargers (i.e., did not discharge their landfill generated wastewaters either directly or indirectly to a surface water).
- 43 landfills were located at industrial sites subject to other Clean Water Act categorical standards would not be subject to the limitations and standards under the proposed approach for this guideline.
- The remaining 31 respondents either did not generate in-scope wastewaters or not operate an in-scope landfill.

Each of the 131 facilities selected for cost analysis was assessed to determine the landfill operations, wastewater characteristics, and wastewater treatment technologies currently in place at the site. Landfill industry costs were projected for several technology options based on costs developed for 128 Subtitle D and three Subtitle C facilities.

In order to develop costs, the current performance of existing wastewater treatment in place was taken into account. In the Detailed Questionnaire, EPA solicited effluent monitoring data in order to evaluate current performance. In cases where no effluent data was provided, EPA modeled the current discharge concentrations of each pollutant of interest in the wastewater at each facility. The current discharge concentrations were modeled from facilities providing data with similar wastewater treatment operations and similar wastewater characteristics. Data utilized for modeling was obtained from the Detailed Questionnaire, the Detailed Monitoring Report (DMR) Questionnaire, and EPA sampling.

Facilities whose current discharges were not meeting the concentrations proposed in today's notice were projected to incur costs as a result of compliance with this guideline. A facility which did not have the BPT treatment technology in-place was costed for installing the BPT technology. A facility already having BPT treatment technology in-place, but not currently meeting the proposed limits, was costed for system upgrades where applicable. Typical upgrades to treatment systems included increasing aeration capacity or residence time, installing new equipment, or increasing chemical usage.

Next, a computer cost model or vender quotes were used to estimate compliance costs for the landfills technology options after taking into account treatment in place, current discharge concentrations of pollutants, and wastewater flow rates for each facility. The computer cost model was programmed with technology-specific modules which calculated the costs for various combinations of technologies as required by the technology options and the facilities' wastewater characteristics. The model calculated the following costs for each facility:

- Capital costs for installed wastewater treatment technologies.
- Operating and maintenance (O&M) costs for installed wastewater treatment technologies; including labor, electrical, and chemical usage costs.
- Solids handling costs; including capital, O&M, and disposal.
- Monitoring costs

Additional cost factors were developed and applied to the capital and O&M costs in order to account for site work, interface piping, general contracting, engineering, instrumentation and controls, buildings, site improvements, legal/administrative fees, interest, contingency, and taxes and insurance.

Other direct costs associated with compliance included retrofit costs associated with integrating the existing on-site treatment with new equipment, RCRA Part B permit modification costs for hazardous facilities, and monitoring costs.

The capital costs (equipment, retrofit and permit modification) were amortized assuming 15 years and seven percent interest and added to the O&M costs (equipment and monitoring) to calculate the total annual costs incurred by each facility as a result of complying with this guideline. The costs associated with each of the 131 facilities in the cost analysis were then modeled to represent the national population by using statistically calculated survey weights.

For many low-flow facilities, EPA concluded that contract hauling wastewater for off-site treatment was the most cost effective option. Where applicable, EPA calculated costs for hauling wastewater to a Centralized Waste Treatment facility for treatment in lieu of installing additional treatment on-site.

EPA estimated pollutant reductions by taking the difference in the current performance of the landfill industry and the expected performance after installation of the BPT/BAT/PSES treatment technology. Pollutant reductions were estimated for each pollutant of interest at each facility. Current performance discharge concentrations were taken from data supplied by the facility, or were modeled based on data supplied from similar treatment systems at similar landfills. The discharge concentrations expected to be achieved were taken from EPA sampling data or from industry supplied data at facilities selected as the best performers. The loads associated with each of the 131 facilities determined in the cost analysis were then modeled to represent the national population by using statistically calculated survey weights.

B. Costs of Compliance

The Agency estimated the cost for landfill facilities to achieve each of the effluent limitations and standards proposed today. These estimated costs are summarized in this section and discussed in more detail in the Technical Development Document. All cost estimates in this section are expressed in terms of 1992 dollars.

The Agency did not evaluate the costs of compliance for direct dischargers from hazardous landfills. EPA's survey of hazardous landfills in the United States indicated that there were no in-scope respondents which were classified as direct dischargers.

All of the indirect discharging hazardous landfills in EPA's survey of the industry are expected to be in compliance with the baseline treatment standards established for indirect dischargers. The Agency has therefore projected that there will be no costs associated with compliance with the proposed regulation.

There are no costs associated with PSES for the Non-Hazardous Landfill Subcategory because the Agency is not establishing PSES limits for non-hazardous landfills. However, as explained previously, the Agency is considering whether to establish

pretreatment standards for ammonia for those facilities who discharge to POTWs without advanced ammonia control. EPA estimated that it would cost $28.2 million (1992 dollars) annualized for all indirect discharging landfill facilities were it to install ammonia pretreatment, regardless of whether or not the POTW had advanced ammonia control.

TABLE I.B–1.—COST OF IMPLEMENTING PROPOSED REGULATIONS

[In millions of 1992 dollars]

Subcategory	Number of facilities	Capital costs	Annual O&M costs
Non-hazardous Direct Dischargers (BPT)	158	$5.70	$6.85
Hazardous Direct Dischargers (BPT)	0	0	0
Hazardous Indirect Dischargers (PSES)	6	0	0

C. Pollutant Reductions

The Agency estimated pollutant reductions for landfill facilities achieving each of the effluent limitations and standards proposed today. These estimated reductions are summarized in this section and discussed in more detail in the document ''Environmental Assessment of Proposed Effluent Limitations and Standards for the Landfills Category.''

The Agency did not evaluate pollutant reductions for direct dischargers from hazardous landfills. Because there were no in-scope respondents which were classified as direct dischargers.

All of the indirect discharging hazardous landfills in EPA's survey of the industry are expected to be in compliance with the baseline treatment standards established for indirect dischargers. The Agency has therefore projected that there will be no pollutant reduction benefits associated with compliance of the proposed regulation.

There are no pollutant reductions associated with PSES for the Non-Hazardous Subcategory because the Agency is not proposing to establish PSES limits for non-hazardous landfills.

TABLE II.C–1.—POLLUTANT REDUCTIONS ACHIEVED BY IMPLEMENTING PROPOSED REGULATIONS

Subcategory	Number of facilities	Conventional pollutant removals (pounds)	Toxic pollutant removals (pounds)
Non-hazardous Direct Dischargers (BPT)	158	640,000	270,000
Hazardous Direct Dischargers (BPT)	0	0	0
Hazardous Indirect Dischargers (PSES)	6	0	0

XI. Economic Analysis

A. Introduction and Overview

This section of the notice reviews EPA's analysis of the economic impacts of the proposed regulation. The economic impacts of several regulatory options were evaluated in each subcategory for BPT, BAT, PSES, NSPS, and PSNS. The technical evaluation and description of each option and the rationale for selecting the proposed option is given in Section [IX] of today's notice. EPA's detailed economic impact assessment can be found in the report titled ''Economic Analysis and Cost Effectiveness Analysis of the Proposed Effluent Limitations Guidelines and Standards for the Landfills Category'' (hereafter ''EA''). The report estimates the economic effect on the industry of compliance with the regulation in terms of facility closures (severe impacts) and financial impacts short of closure (moderate impacts) for privately owned landfill facilities. For publicly owned landfill facilities, the report estimates financial impacts short of closure. The report also includes analysis of the effects of the regulation on new landfill facilities and an assessment of the impacts on small businesses and other small entities. The report includes a separate section called ''Cost-Effectiveness Analysis'', which presents an analysis of the cost-effectiveness of the proposed regulation.

The proposed regulatory option for BPT/BCT/BAT for the Non-Hazardous Subcategory is Option II, which is estimated to have a total annualized cost (for privately owned facilities post-tax costs were evaluated) of $6.85 million (1992$). The proposed regulatory option for BPT/BCT/BAT for the Hazardous Subcategory is Option I, which is estimated to have no costs associated with compliance. The proposed regulatory option for PSES for the Hazardous Subcategory is Option I, which is also estimated to have no costs associated with compliance.

TABLE III.A–1.—TOTAL COSTS OF PROPOSED REGULATORY OPTIONS

Proposed options	Total capital costs (Mil 1992$)	Total O&M costs (Mil 1992$)	Post-tax total annualized costs (Mil 1992$)
NON-HAZARDOUS SUBCATEGORY			
BPT/BCT/BAT=Option II	$18.54	$5.70	$6.85

TABLE III.A–1.—TOTAL COSTS OF PROPOSED REGULATORY OPTIONS—Continued

Proposed options	Total capital costs (Mil 1992$)	Total O&M costs (Mil 1992$)	Post-tax total annualized costs (Mil 1992$)
HAZARDOUS SUBCATEGORY			
BPT/BCT/BAT=Option I	0.00	0.00	0.00
PSES=Option I	0.00	0.00	0.00

B. Baseline Conditions

The first step in the development of an economic analysis is the definition of the baseline state from which any changes are to be measured. The baseline should be the best assessment of the way the world would look absent the proposed regulation. In this case, the baseline has been set by assuming the status quo will continue absent the enactment of the regulation.

An after-tax cash flow test was conducted on the privately owned facilities where information was available. The test consisted of calculating the after-tax cash flows for each facility for both 1991 and 1992. If a facility experienced negative after-tax cash flows averaged across the two years, the facility was deemed to be a baseline closure. Seven facilities failed the test, and thus were deemed to be baseline closures.

In recent years, the landfill industry has been affected by a number of opposing forces. Growth in composting and recycling as well as increased source reduction has resulted in a continuing decline in the share of waste received at landfills. The number of landfills has declined rapidly since 1988, although estimated total landfill capacity has not significantly declined. Modern landfills have taken advantage of economies of scale and have offset landfill capacity lost due to closure of very small landfills. The privately owned landfill segment of the industry has also experienced industry consolidation as the result of recent mergers and acquisitions.

The Agency recognizes that its data base, which represents conditions in 1992, may not precisely reflect current conditions in the industry today. EPA recognizes that the questionnaire data were obtained several years ago and thus may not precisely mirror present conditions at every facility. Nevertheless, EPA concluded that the data provide a sound and reasonable basis for assessing the overall ability of the industry to achieve compliance with the regulations. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities.

C. Methodology

The landfills industry is characterized by facilities owned by public or private entities. Consequently, EPA used two different criteria to evaluate economic impacts on privately owned or publicly owned facilities. From the Detailed Questionnaire database, EPA estimates that there are 60 privately owned and 98 publicly owned landfill facilities affected by this regulation.

For privately owned landfill facilities, EPA applied two financial tests to determine facility level economic impacts. The first is the after-tax cash flow test. This test examines whether a facility loses money on a cash basis. The second test is the ratio of the facility's estimated compliance costs to the facility's revenue.

The economic impact analysis for privately owned facilities measures three types of primary impacts.

- Severe impacts, defined as facility closures, were projected if the proposed regulation would be expected to cause a facility to incur, on average, negative after-tax cash flow over the two-year period of analysis.
- Moderate impacts were defined as a financial impact short of entire facility closure. All facilities were assessed for the projected incurrence of total annualized compliance costs exceeding five percent of facility revenue.
- Possible employment losses were assessed for facilities estimated to close or discontinue waste treatment operations as a result of regulation.

For publicly owned landfill facilities, EPA applied two financial tests to determine facility level economic impacts. The first test is the compliance cost share of household income. This test examines whether a facility's estimated annualized compliance costs will equal or exceed one percent of the median household income in the jurisdiction governed by the municipality that owns the facility. The second test is the total landfill disposal cost share of household income. This test examines whether a facility's total landfill costs, including compliance costs, equal or exceed one percent of the median household income in the jurisdiction governed by the municipality that owns the facility.

The economic impact analysis for publicly owned facilities measures two types of primary impacts: severe impacts and moderate impacts. Each impact analysis measure is reviewed briefly below.

- Severe impacts were evaluated by application of the compliance cost share of household income test. A facility is deemed to be severely impacted if the compliance cost share of median household income was equal to or greater than one percent.
- Moderate impacts were evaluated by application of the total landfill disposal cost share of household income. A facility is deemed to be moderately impacted if the total landfill disposal cost share of median household income was equal to or greater than one percent.

The economic impact analysis for the proposed landfill regulation assumes that landfill facilities would not be able to pass the costs of compliance on to their customers through price increases. While a zero cost pass-through assumption is typically characterized as a conservative assumption, in this case, it is presumably an accurate assumption since the affected facilities represent a portion of the broader landfills services industry.

D. Summary of Economic Impacts

1. Economic Impacts of Proposed BPT

The statutory requirements for the assessment of BPT options are that the total cost of treatment must not be wholly disproportionate to the additional effluent benefits obtained. EPA evaluates treatment options by first calculating pre-tax total annualized costs and total pollutant removals in pounds. EPA then compared the ratio of the costs to the removals for each option. The selected option is then compared to the range of ratios in previous regulations to gauge its impact. The results of the cost and removal comparison are presented in Table IV.D–1. In the Non-Hazardous

Subcategory, Option I has a ratio of $8.83 per pound while Option II has a ratio of $10.16 per pound. Option II provides significant additional pollutant removals at a relatively low cost, thus EPA is proposing limits based on this option. Option II is also found to be within the historical bounds of BPT cost to removal ratios.

TABLE IV.D–1.—BPT COST REASONABLENESS ANALYSIS

Options	Pre-tax total annualized costs (Mil 1992$)	Total removals (lbs)	Average cost reasonable-ness (1992 $/lb)
NON-HAZARDOUS SUBCATEGORY			
I	$5.97	676,280	$8.83
II	7.73	760,782	10.16
HAZARDOUS SUBCATEGORY			
I	0.00	0	.....

The proposed regulatory option for BPT is Option II for both privately and publicly owned facilities. The postcompliance analysis under Option II projects two facility closures as a result of the compliance with the proposed option. The direct job losses associated with postcompliance closure are 20 Full Time Equivalent (FTE) positions. Table V.D–2 summarizes the economic impacts for the BPT options.

TABLE V.D–2.—IMPACTS OF EVALUATED BPT OPTIONS

Options	Post-tax total annualized costs (Mil 1992$)	Severe impacts	Moderate impacts	Direct employment losses (FTEs)
NON-HAZARDOUS SUBCATEGORY				
I	$5.43	2	0	20
II	6.85	2	0	20
HAZARDOUS SUBCATEGORY				
I	0.00	0	0	0

2. Economic Impacts of Proposed BAT Option

In the Non-Hazardous Subcategory, an additional technology Option BAT III (reverse osmosis) was evaluated for economic achievability. Option III has significantly higher annualized compliance costs than BPT Options I and II. As a result, the number of facilities experiencing moderate economic impacts increased from none under BPT Option II to six under BAT Option III, while the number of facilities experiencing severe economic impacts remained unchanged. BAT Option III is found to be not economically achievable due to the large portion of the affected population experiencing at least moderate economic impact.

TABLE VI.D–3.—IMPACTS OF EVALUATED BAT OPTIONS

Options	Post-tax total annualized costs (Mil 1992$)	Severe impacts	Moderate impacts	Direct employment losses
NON-HAZARDOUS SUBCATEGORY				
III	$29.16	2	6	20 FTEs

3. Economic Impact of Proposed PSES

The proposed regulatory option for PSES for the Hazardous Subcategory is Option I. The postcompliance analysis under the selected option projects no incremental costs of compliance and no economic impact. As discussed in Section [IX], no PSES options are evaluated for the Non-Hazardous Subcategory.

4. Economic Analysis of Proposed NSPS and PSNS

EPA is establishing NSPS limitations equivalent to the limitations that are established for BPT/BCT/BAT for both the Non-Hazardous and Hazardous Subcategories. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. BPT/BCT/BAT limitations are found to be economically achievable; therefore, NSPS limitations

will not present a barrier to entry for new facilities.

EPA is setting PSNS equal to PSES limitations for existing sources for the Hazardous Subcategory. Given EPA's finding of economic achievability for the PSES regulation, EPA also finds that the PSNS regulation will be economically achievable and will not constitute a barrier to entry for new sources.

5. Firm Level Impacts

Firms differ from facilities in that firms are business entities or companies, which may operate at several physical locations. Facilities are individual establishments defined by their physical location, whether or not they constitute an independent business entity on their own. Some facilities in the survey sample are single-facility firms. In these cases, the firm-level impact depends only on the facility-level impact. In other cases, though, sampled facilities are owned by multi-facility firms, so that the impact on the parent firm depends not only on that facility, but also on the impacts on and characteristics of other facilities owned by the same firm.

In this analysis, significant adverse impacts on firms are indicated when firm-level compliance costs exceed five percent of firm revenues. Using this criterion, EPA finds no significant adverse impacts on affected firms and therefore determines that the proposed effluent guideline will not impose unreasonable economic burdens on firms that own in-scope landfills.

6. Community Impacts

Community impacts are assessed by estimating the expected change in employment in communities with landfills that are affected by the proposed regulation. Possible community employment effects include the employment losses in the facilities that are expected to close because of the regulation and the related employment losses in other businesses in the affected community. In addition to these estimated employment losses, employment may increase as a result of facilities' operation of treatment systems for regulatory compliance. It should be noted that job gains will mitigate community employment losses only if they occur in the same communities in which facility closures occur.

The proposed regulation is estimated to result in one post-compliance closure of a sampled facility (which represents two facilities in the nationally estimated impacts). The post-compliance closure results in the direct loss of 10 Full-Time Equivalent (FTE) positions (which represents 20 FTE positions in the nationally estimated impacts). Secondary employment impacts are estimated based on multipliers that relate the change in employment in a directly affected industry to aggregate employment effects in linked industries and consumer businesses whose employment is affected by changes in the earnings and expenditures of the employees in the directly and indirectly affected industries.

For the sampled facility projected to close as a result of the proposed rule, the application of the state specific multiplier of 4.935 to the 10 direct FTE losses leads to an estimated community impact of 49 total FTE losses as the result of the proposed rule. The county in which the closure is projected to occur has a current employment of 20,000 FTEs dispersed among 1,200 establishments. The direct and secondary job losses represent 0.25 percent of current employment in the affected county. The additional 10 direct FTE losses represented by the sampled facility in the calculation of national estimates cannot be attributed to any particular community. The secondary effects can be estimated at the national level by using the national average multiplier of 4.049, resulting in an estimate of 40 total FTE losses associated with the represented facility closure. These losses are mitigated by the job gains associated with the operation of control equipment which are estimated to be 79 FTEs.

7. Foreign Trade Impacts

EPA does not project any foreign trade impacts as a result of the effluent limitations guidelines and standards. International trade in landfill services for the disposal of hazardous and nonhazardous wastes is virtually nonexistent.

E. Cost-Effectiveness Analysis

EPA also performed a cost-effectiveness analysis (refer to Cost Effectiveness section of the ''EA'') of the potential regulatory options for the Non-Hazardous Subcategory. The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called ''pounds-equivalent.'' The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb. eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not take into account the removal of conventional pollutants (e.g., oil and grease, biochemical oxygen demand, and total suspended solids).

For the cost-effectiveness analysis, the estimated pounds-equivalent of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher the pollutant's toxic weighting factor will be and, accordingly, the use of pounds-equivalent gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyses are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

The results of the cost effectiveness analysis for the potential BAT Option III for the Non-Hazardous Subcategory are presented in Table VIII. E–1. The potential option has an incremental (to BPT Option II) cost effectiveness of $13,346 per lb.-equivalent. The result of the cost effectiveness analysis reinforces the conclusion that BAT Option III is not economically achievable.

TABLE VIII.E–1.—BAT COST EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs (Mil 1981$)	Incremental removals (lb. eq.)	Incremental cost-effectiveness ($/lb. eq.)
NON-HAZARDOUS SUBCATEGORY			
III	$21.97	1,646	$13,346

XII. Water Quality Analysis and Environmental Benefits

A. Introduction

EPA evaluated the environmental benefits of controlling priority and nonconventional pollutant discharges to surface waters and publicly-owned treatment works (POTWs). Pollutant discharges into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and may adversely impact human health through the consumption of contaminated fish and water. Furthermore, pollutant discharges to a POTW may interfere with POTW operations by inhibiting biological treatment or by contaminating POTW biosolids.

Many pollutants commonly found in landfill wastewaters have at least one toxic effect (e.g., the pollutant may be a human health carcinogen or toxic to either some human system or to aquatic life). In addition, several of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency's analysis focused on the effects of toxic pollutants and did not evaluate the effects of two conventional pollutants and five nonconventional pollutants including total suspended solids (TSS), five-day biochemical demand (BOD_5) chemical oxygen demand (COD), total dissolved solids (TDS), total organic carbon (TOC), hexane extractable material, and total phenolic compounds. Although the Agency is not able to monetize the benefits associated with reductions of non-toxic parameters, discharges of these parameters can have adverse effects on human health and the environment. For example, suspended particulate matter can degrade habitat by reducing light penetration and thus primary productivity and can alter benthic spawning grounds and feeding habitats by accumulation in streambeds. High COD and BOD_5 discharges can deplete oxygen levels, which can result in mortality or other adverse effects on fish.

B. Water Quality Impacts and Benefits

The Agency's analyses of these environmental and human health risk concerns and of the water quality-related benefits resulting from the proposed effluent guidelines are contained in the ''Environmental Assessment of the Proposed Effluent Guidelines for the Landfill Category.'' This assessment both qualitatively and quantitatively evaluates the potential: (1) Ecological benefits; (2) the human health benefits; and (3) the economic productivity benefits of controlling discharges from hazardous and non-hazardous landfills based on site-specific analyses of current conditions and the conditions that would be achieved by proposed process changes. In-stream pollutant concentrations from direct and indirect discharges are estimated using stream dilution modeling. Potential impacts and benefits are then estimated.

Ecological benefits are projected by comparing the steady-state in-stream pollutant concentrations, predicted after complete immediate mixing with no loss from the system, to EPA published water quality criteria guidance or to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration) for those chemicals for which EPA has not published water quality criteria. In performing these analyses, EPA used guidance documents published by EPA that recommend numeric human health and aquatic life water quality criteria for numerous pollutants. States often consult these guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, EPA used the nationwide criteria guidance as the most representative value. For arsenic, the Agency also recognizes that currently there is no scientific consensus on the most appropriate approach for extrapolating the dose-response relationship to the low-dose associated with drinking water exposure. EPA used the findings from the analysis of reduced occurrence of pollutant concentrations in excess of both aquatic life and human health criteria or toxic effect levels to assess improvements in recreational fishing habitats and, in turn, to estimate, if applicable, a monetary value for enhanced recreational fishing opportunities. Such benefits are expected to manifest as increases in the value of the fishing experience per day fished or the number of days anglers subsequently choose to fish the cleaner waterways. These benefits, however, do not include all of the benefits that are associated with improvements in aquatic life, such as increased assimilation capacity of the receiving stream, improvements in taste and odor, or improvements to other recreational activities such as swimming and wildlife observation.

Human health benefits are projected by: (1) Comparing estimated in-stream concentrations to health-based water quality toxic effect levels or EPA published water quality criteria; and (2) estimating the potential reduction of carcinogenic risk and non-carcinogenic hazard from consuming contaminated fish or drinking water. Upper-bound individual cancer risks, population risks, and non-cancer hazards (systemic) are estimated using modeled in-stream pollutant concentrations and standard EPA assumptions regarding ingestion of fish and drinking water. Modeled pollutant concentrations in fish and drinking water are used to estimate cancer risk and non-cancer hazards (systemic) among the general population, sport anglers and their families, and subsistence anglers and their families. Due to the hydrophobic nature of the two chlorinated dibenzo-p-dioxin (CDD) congeners and one chlorinated dibenzofuran (CDF) congener being evaluated, human health benefits are projected for these pollutants only by using the Office of Research and Development's Dioxin Reassessment Evaluation (DRE) model to estimate the potential reduction of carcinogenic risk and non-carcinogenic hazard from consuming contaminated fish. The DRE model estimates fish tissue concentrations of the CDD/CDF congeners by calculating the equilibrium between the pollutants in fish tissue and those adsorbed to the organic fraction of sediments suspended in the water column. Of these health benefit measures, the Agency is able to monetize only the reduction in

carcinogenic risk using estimated willingness-to-pay values for avoiding premature mortality. The values used in this analysis, if applicable, are based on a range of values from a review of studies quantifying individuals' willingness to pay to avoid increased risks to life. In 1992 dollars, these values range from $2.1 to $11.0 million per statistical life saved.

Economic productivity benefits, based on reduced incidences of inhibition of POTW operations and reduced sewage sludge contamination (defined as a concentration of pollutants in sewage sludge that would not permit land application or surface disposal of the sludge in compliance with EPA's regulations) are also evaluated for current and proposed pretreatment levels. Inhibition of POTW operations is estimated by comparing modeled POTW influent concentrations to available published information on inhibition levels. Potential contamination of sewage sludge is estimated by comparing projected pollutant concentrations in sewage sludge to EPA standards on the use or disposal of sewage sludge 40 CFR Part 503. Sewage sludge disposal benefits are estimated on the basis of the incremental quantity of sludge that, as a result of reduced pollutant discharges to POTWs, meets criteria for the generally less expensive disposal method, namely land application and surface disposal. The POTW inhibition and sludge values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Therefore, EPA does not intend to base its regulatory approach for proposed pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness or causing them to violate applicable limits for their chosen disposal methods. However, as discussed above, EPA *did* find that some pollutants would pass through POTW treatment systems as a basis for its determination to establish pretreatment standards in certain cases. Nonetheless, the values used in this analysis help indicate the potential benefits for POTW operations and sludge disposal that may result from the compliance with proposed pretreatment discharge levels.

EPA evaluated the potential aquatic life and human health impacts of direct wastewater discharges on receiving stream water quality at current levels of treatment and at proposed BAT treatment levels. EPA performed this analysis for a representative sample set of 43 direct non-hazardous landfills discharging 32 pollutants to 41 receiving streams. Results were extrapolated based on the statistical methodology used for estimated costs, loads, and economic impacts.

The proposed regulation is projected to reduce excursions of chronic aquatic life criteria or toxic effect levels due to the discharge of three pollutants (ammonia, boron and disulfoton) in four receiving streams. EPA projects that a total of 97 excursions in 38 receiving streams at current conditions would be reduced to 44 excursions in 34 streams. In-stream concentrations of one pollutant (arsenic) are projected to exceed human health criteria (developed for consumption of water and organisms) in four receiving streams at both current and proposed BAT discharge levels. Estimates of the increase in value of recreational fishing to anglers range from $126,000 to $450,000 annually (in 1992 dollars) based on the baseline value of the fishery and the estimated incremental benefit values associated with freeing the fishery from contaminants.

EPA modeled cancer cases and systemic health effects resulting from the ingestion of fish and drinking water contaminated by non-hazardous landfill wastewater. EPA concluded that current wastewater discharges from landfills result in far less than one annual cancer case per year for all populations evaluated. Because the baseline cancer rate is negligible, EPA projects no reduction in cancer cases to be achieved by this regulation. Systemic health effects from one pollutant (disufoton) are projected in two receiving streams at both current and proposed BAT discharge levels affecting a total population of 643 subsistence anglers and their families.

EPA's survey of hazardous landfills in the United States indicated that there were no in-scope respondents which were classified as direct dischargers. Therefore, the Agency did not evaluate potential aquatic life and human health impacts of direct wastewater discharges from hazardous landfills.

All of the in-scope hazardous landfills in EPA's survey of the industry are expected to be in compliance with the baseline treatment standards established for indirect dischargers. The Agency has therefore projected that there will be no costs or benefits associated with compliance of the proposed regulation.

EPA did, however, evaluate the effects of landfill wastewater discharges of 60 pollutants on receiving stream water quality at current and proposed pretreatment levels. The EPA Detailed Questionnaire identified three hazardous landfills discharging to three POTWs with outfalls located on three receiving streams.

In-stream concentrations are not projected to exceed chronic aquatic life criteria or toxic effect levels. In-stream concentrations of one pollutant (arsenic) are projected to exceed human health criteria (developed for consumption of water and organisms) in one receiving stream at both current and proposed pretreatment levels. No benefits, based on enhanced recreational fishing opportunities are therefore projected to be achieved by regulation.

EPA modeled cancer cases and systemic health effects resulting from the ingestion of fish and drinking water contaminated by landfill wastewater. EPA concluded that current wastewater discharges from landfills result in far less than one annual cancer case per year. Because the baseline cancer rate is negligible, EPA projects no reduction in cancer cases to be achieved by this regulation. No systemic health effects are projected at current or proposed pretreatment levels.

Additionally, EPA concluded that there are no inhibition or sludge contamination problems at the three POTWs receiving wastewater.

XIII. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

The primary source of air pollution from landfills is due to the microbial breakdown of organic wastes from within the landfill. Landfills are known to be major sources of greenhouse gas emissions such as methane and carbon dioxide. These emissions are now regulated under the Clean Air Act as a result of the landfill New Source Performance Standards and Emissions Guidelines, promulgated by EPA on March 12, 1996. Many municipal solid waste (MSW) landfills are required to

collect and combust the gases generated in the landfill.

Wastewater collected from within the landfill contains organic compounds which include volatile organic compounds (VOC) and hazardous air pollutants (HAP). These wastewaters must be collected, treated and stored in units which are often open to the atmosphere and will result in the volatilization of certain compounds. The regulations proposed today involve the use of an aerated biological system. Wastewater aeration may increase the volatilization of certain organic compounds. However, the increase in air emissions due to this proposed regulation will be minimal due to the low levels of VOCs present in landfill wastewaters and will not significantly increase the air emissions from landfills.

In addition, EPA is addressing emissions of VOCs from industrial wastewater through a Control Techniques Guideline (CTG) under Section 110 of the Clean Air Act. In September, 1992, EPA published a draft document entitled ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'' (EPA–453/0–93–056). This document addresses various industries, including the hazardous waste treatment, storage, and disposal industry, and outlines emissions expected from their wastewater treatment systems, and methods for controlling them.

B. Solid Waste

Solid waste will be generated due to a number of the proposed treatment technologies. These wastes include sludge from biological treatment systems and chemical precipitation systems. Solids from treatment processes are typically dewatered and disposed in the on-site landfill. Therefore, the increased amount of sludge created due to this regulation will be negligible in comparison with the daily volumes of waste processed and disposed of in a typical landfill.

C. Energy Requirements

EPA estimates that the attainment of these standards will increase energy consumption by a very small increment over present industry use. The treatment technologies proposed are not energy-intensive, and the projected increase in energy consumption is primarily due to the incorporation of components such as power pumps, mixers, blowers, power lighting and controls. The costs associated with these energy costs are included in EPA's estimated operating costs for compliance with the proposed guideline.

XIV. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Paperwork Reduction Act

The proposed effluent guidelines and standards contain no information collection activities and, therefore, no information collection request (ICR) has been submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that, whenever an agency is required to publish general notice of rulemaking for a proposed rule, the agency must prepare (and make available for public comment) an initial regulatory flexibility analysis (IRFA). The agency must prepare an IRFA for a proposed rule unless the Administrator certifies that it will not have a significant economic impact on a substantial number of small entities. EPA is today certifying, pursuant to Section 605(b) of the RFA, that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an IRFA.

While EPA has so certified today's rule, the Agency nonetheless prepared a regulatory flexibility assessment equivalent to that required by the Regulatory Flexibility Act as modified by the Small Business Regulatory Enforcement Fairness Act of 1996. The assessment for this rule is detailed in the ''Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Landfill Category.''

The proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the following reasons. The RFA defines ''small entity'' to mean a small business, small organization or small governmental jurisdiction. Today's proposal would establish requirements applicable to landfill facilites which may be owned by small businesses or small governmental jurisdictions. EPA's assessment found that, of the 151 facilities[7] that may be potentially affected if the proposal is promulgated, only 39 facilities are small entities. Of the 39 affected small entities, nine are privately owned and 30 are government owned. The costs to the entities is not projected to be great—in all cases less than one percent of revenues. Based on this assessment, the Administrator certifies that the proposed rule will not have a significant economic effect on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated the total annualized costs of the proposed rule to State, local, and tribal governments as $5.4 million (1996$). EPA has estimated total annualized cost of the proposed rule to private facilities as $2.3 million (1996$, post-tax). Thus, today's rule is not

[7] This is the total number of affected facilities, net of baseline closures among privately owned facilities.

subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

D. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not proposing any new analytical test methods as part of today's proposed effluent limitations guidelines and standards. EPA performed literature searches to identify any analytical methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. The results of this search confirm EPA's determination to continue to rely on its existing analytical test methods for the analytes for which effluent limitations and pretreatment standards are proposed. Although the Agency initiated data collection for these effluent guidelines many years prior to enactment of the NTTAA, traditionally, analytical test method development has been analogous to the Act's requirements for consideration and use of voluntary consensus standards.

The proposed rule would require dischargers to monitor for BOD_5, TSS, pH, ammonia, arsenic, chromium (total), zinc, alpha terpineol, aniline, benzene, benzoic acid, p-cresol, phenol, naphthalene, pyridine, and toluene.

Except for alpha terpineol, aniline benzoic acid, p-cresol, and pyridine, methods for monitoring these pollutants are specified in tables at 40 CFR Part 136. When available, methods published by voluntary consensus standards bodies are included in the list of approved methods in these tables. Specifically, voluntary consensus standards from the American Society for Testing and Materials (ASTM) and from the 18th edition of Standard Methods (published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation) are approved for pH, ammonia, arsenic, chromium (total), and zinc. Standard Methods are available for BOD_5, TSS, benzene, phenol, napthalene, and toluene. In addition, USGS methods are approved for BOD_5, TSS, pH, ammonia, arsenic, chromium (total) and zinc.

For alpha terpineol, aniline, benzoic acid, p-cresol, and pyridine, EPA proposes to use EPA Methods 1625 and 625 which are promulgated at 40 CFR Part 136. These analytical methods were used in data collection activities in support of today's proposed limitations. With the exception of alpha terpineol, these analytes are not specified as analytes in the method.

EPA requests comments on the discussion of NTTAA, on the consideration of various voluntary consensus standards, and on the existence of other voluntary consensus standards that EPA may not have found.

XV. Regulatory Implementation

A. Applicability

Today's proposal represents EPA's best judgment at this time as to the appropriate technology-based effluent limits for the landfills industry. These effluent limitations and standards, however, may change based on comments received on this proposal, and subsequent data submitted by commenters or developed by the Agency. Therefore, while the information provided in the Technical Development Documents may provide useful information and guidance to permit writers in determining best professional judgment permit limits for landfills, the permit writer will still need to justify any permit limits based on the conditions at the individual facility.

B. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of waste streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n).

C. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

1. Fundamentally Different Factors Variances

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitation or standards applicable to the individual facility. Such a modification is known as a ''fundamentally different factors'' (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT

limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR 125 Subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. The pretreatment regulation incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSES.

2. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request modification of a permit modification be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modifications that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

3. Removal Credits

The CWA establishes a discretionary program for POTWs to grant ''removal credits'' to their indirect discharges. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW (*See* 40 CFR 403.7). EPA has promulgated removal credit regulations as part of its pretreatment regulations. Under EPA's pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of

EPA's removal credit regulations,[8] following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR Part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with Section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to Part 403 regulations (58 FR 9382–83), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA have established a numerical pollutant limit in Part 503; or (2) which EPA has determined will not threaten human health and the environment when used or disposed in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

Consequently, in the case of a pollutant for which EPA did not perform a risk assessment in developing its Round One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[9]

EPA has concluded that a POTW discharge of a particular pollutant will not prevent sewage sludge use (or disposal) so long as the POTW is complying with EPA's Part 503 regulations and so long as the POTW demonstrates that use or disposal of sewage sludge containing that pollutant will not adversely affect public health and the environment. Thus, if the POTW meets these two conditions, a POTW may obtain removal credit authority for pollutants other than those specifically regulated in Part 503 regulations. What is necessary for a POTW to demonstrate that a pollutant will not adversely affect public health and the environment will depend on the particular pollutant, the use or disposal means employed by the POTW and the concentration of the pollutant in the sewage sludge. Thus, depending on the circumstances, this effort could vary from a complete 14-pathway risk assessment modeling exercise to a simple demonstration that available scientific data show that, at the levels observed in the sewage sludge, the pollutant at issue is not harmful. As part of its initiative to simplify and improve its regulations, at the present time, EPA is considering whether to propose changes to its pretreatment regulations so as to provide for case-by-case removal credit determinations by the POTWs' permitting authority.

EPA has already begun the process of evaluating several pollutants for adverse potential to human health and the environment when present in sewage sludge. In November 1995, pursuant to the terms of the consent decree in the *Gearhart case*, the Agency notified the United States District Court for the District of Oregon that, based on the information then available at that time, it intended to propose only two pollutants for regulation in the Round Two sewage sludge regulations dioxins/dibenzofurans (all monochloro to octochloro congeners) and polychlorinated biphenyls.

The Round Two sludge regulations are not scheduled for proposal until December 1999 and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could conclude before the contemplated proposal and promulgation dates that regulation of some of these pollutants is not necessary. In those circumstances, EPA could propose that removal credits should be authorized for such pollutants before promulgation of the Round Two sewage sludge regulations. However, given the Agency's commitment to promulgation of effluent limitations and guidelines under court-supervised deadlines, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these guidelines and standards.

D. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations and standards for this proposed rule to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this proposed regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants) the permitting authority must apply those limitations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in an NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to ensure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(I)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to

[8] Under Section 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(I), (ii), and (iii).

[9] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (see Appendix G to Part 403) did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutant in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

the extend consistent with EPA's regulations.

E. Implementation for Facilities With Landfills in Multiple Subcategories

According to the 1992 Waste Treatment Industry: Landfills Questionnaire, there are several facilities which operate both Subtitle C hazardous landfills and Subtitle D non-hazardous landfills on-site. Generally, for determination of effluent limits where there are multiple categories and subcategories, the effluent guidelines are applied using a flow-weighted combination of the appropriate guideline for each category or subcategory. Thus, the normal practice would be to develop flow-weighted limitations for the combined Subtitle C and Subtitle D wastestreams, a flow-weighted combination of the BPT, BAT, or PSES limits for the Landfills Category. However, under EPA's RCRA regulations, mixtures of hazardous and non-hazardous waste must be managed under RCRA hazardous waste regulations. Consequently, a commingled flow of hazardous and non-hazardous waste is to be treated as a hazardous waste. Therefore, if wastewater from a Subtitle C hazardous landfill and a Subtitle D non-hazardous landfill are commingled for treatment, then the effluent from that facility is subject to the limitations and standards proposed for the Hazardous Subcategory.

F. Implementation for Contaminated Groundwater Flows

As discussed in Section [VIII] groundwater flows are not subject to the effluent limits established in today's rule. According to the 1992 Waste Treatment Industry: Landfills Questionnaire, there are a number of facilities which collect contaminated groundwater in addition to flows regulated under this proposal, and many facilities commingle these flows for treatment. Due to this site-to-site variability, the Agency is not able to determine how the proposed guidelines should be implemented for commingled flows of groundwater and regulated wastewaters.

In the case of such facilities, EPA believes that decisions regarding the appropriate discharge limits again should be left to the judgment of the permit writer. As indicated by data collected through the questionnaires, groundwater characteristics are often site-specific and may contain very few contaminants or may, conversely, exhibit characteristics similar in nature to leachate.

In cases where the groundwater is very dilute the Agency is concerned that contaminated groundwater may be used as a dilution flow. In these cases, the permit writer should develop BPJ permit limits based on separate treatment of the flows, or develop BPJ limits based on the Combined Waste Stream formula, in order to prevent dilution of the regulated leachate flows. However, in cases where the groundwater may exhibit characteristics similar to leachate, commingled treatment may be appropriate, cost effective and environmentally beneficial. EPA recommends that the permit writer consider the characteristics of the contaminated groundwater before making a determination if commingling groundwater and leachate for treatment is appropriate.

XVI. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the ''For Further Information'' section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

B. Specific Data and Comment Solicitations

EPA has solicited comments and data on many individual topics throughout this preamble. The Agency incorporates each and every such solicitation here, and reiterates its interest in receiving data and comments on the issues addressed by those solicitations. In addition, EPA particularly requests comments and data on the following issues:

1. Exclusion from the scope of this rule of landfill facilities operated in conjunction with other industrial or commercial operations which only receive waste from off-site facilities under the same corporate structure (intra-company facility) and/or receive waste generated on-site (captive facility) so long as the wastewater is commingled for treatment with other non-landfill process wastewaters. (Refer to Section [III])

2. The Agency's decision not to further subcategorize the Landfills Category on the basis of Subtitle D monofills. (Refer to Section [VII])

3. The Agency's decision not to subcategorize the Landfills Category on the basis of the age of a landfill. EPA considered whether age-related changes in leachate concentrations of pollutants necessitate different discharge limits for different age classes of landfills. EPA solicits comment and data on its conclusions regarding the relationship of wastewater characteristics to the age of the landfill. (Refer to Section [VII])

4. The Agency's decision to include drained free liquids within the scope of the wastewaters to be covered under this proposal. Due to the limited amount of data submitted to EPA on the characteristics of drained free liquids, and due to the potentially unique nature of these flows, the Agency solicits comments and data on including drained free liquids within the scope of this guideline. (Refer to Section [VIII])

5. EPA's decision not to base BAT limits on Reverse Osmosis treatment technology. (Refer to Section [IX])

6. The Agency is requesting comments to provide information and data on other treatment systems that may be pertinent to the development of standards for this industry. (Refer to Section [IX])

7. EPA is soliciting information on POTW upsets or POTW sludge contamination problems as a result of accepting landfill leachate. (Refer to Section [IX])

8. The Agency is soliciting comments and information on its decision not to propose pretreatment standards for non-hazardous landfills. (Refer to Section [IX])

9. EPA did consider establishing pretreatment standards for ammonia for indirect dischargers whose POTWs do not have nitrification or other advanced, control of ammonia. EPA is soliciting comment on the feasibility of this option. (Refer to Section [IX])

10. EPA is soliciting comment with regard to problems at POTWs associated with ammonia discharges from landfills. (Refer to Section [IX])

11. The Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards

for hazardous landfills. (Refer to Section [IX])

12. The Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards for new sources of hazardous landfills. (Refer to Section [IX])

13. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities. (Refer to Section [XI])

Definitions, Acronyms, and Abbreviations

Agency: The U.S. Environmental Protection Agency.

BAT: The best available technology economically achievable, applicable to effluent limitations to be achieved by July 1, 1984, for industrial discharges to surface waters, as defined by Sec. 304(b)(2)(B) of the CWA.

BCT: The best conventional pollutant control technology, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by Sec. 304(b)(4) of the CWA.

BPT: The best practicable control technology currently available, applicable to effluent limitations to be achieved by July 1, 1977, for industrial discharges to surface waters, as defined by Sec. 304(b)(1) of the CWA.

Clean Water Act (CWA): The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

Clean Water Act (CWA) Section 308 Questionnaire: A questionnaire sent to facilities under the authority of Section 308 of the CWA, which requests information to be used in the development of national effluent guidelines and standards.

Closed: A facility or portion thereof that is currently not receiving or accepting wastes and has undergone final closure.

Commercial Facility: A facility that treats, disposes, or recycles/recovers the wastes of other facilities not under the same ownership as this facility. Commercial operations are usually made available for a fee or other remuneration. Commercial waste treatment, disposal, or recycling/recovery does not have to be the primary activity at a facility for an operation or unit to be considered ''commercial''.

Contaminated Groundwater: Water below the land surface in the zone of saturation which has been contaminated by landfill leachate. Contaminated groundwater occurs at landfills without liners or at facilities that have released contaminants from a liner system. Groundwater may also become contaminated if the water table rises to a point where it infiltrates the landfill or the leachate collection system.

Contaminated Storm Water: Storm water which comes in direct contact with the waste or waste handling and treatment areas. Storm water which does not come into contact with the wastes is not subject to the proposed limitations and standards.

Conventional Pollutants: Constituents of wastewater as determined by Sec. 304(a)(4) of the CWA, including pollutants classified as biochemical oxygen demand, total suspended solids, oil and grease, fecal coliform, and pH.

Deep Well Injection: Disposal of wastewater into a deep well such that a porous, permeable formation of a larger area and thickness is available at sufficient depth to ensure continued, permanent storage.

Detailed Monitoring Questionnaire (DMQ): Questionnaires sent to collect monitoring data from 27 selected landfill facilities based on responses to the Section 308 Questionnaire.

Direct Discharger: A facility that discharges or may discharge treated or untreated wastewaters into waters of the United States.

Drained Free Liquids: Aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling. Landfills which accept containerized waste may generate this type of wastewater.

Effluent Limitation: Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b).)

Existing Source: Any facility from which there is or may be a discharge of pollutants, the construction of which is commenced before the publication of the proposed regulations prescribing a standard of performance under Sec. 306 of the CWA.

Facility: All contiguous property owned, operated, leased or under the control of the same person or entity.

Gas Condensate: A liquid which has condensed in the landfill gas collection system during the extraction of gas from within the landfill. Gases such as methane and carbon dioxide are generated due to microbial activity within the landfill, and must be removed to avoid hazardous conditions.

Groundwater: The body of water that is retained in the saturated zone which tends to move by hydraulic gradient to lower levels.

Hazardous Waste: Any waste, including wastewater, defined as hazardous under RCRA, TSCA, or any State law.

Inactive: A facility or portion thereof that is currently not treating, disposing, or recycling/recovering wastes.

Indirect Discharger: A facility that discharges or may discharge wastewaters into a publicly-owned treatment works (POTW).

Landfill: An area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave.

Landfill Generated Wastewaters: Wastewater generated by landfill activities and collected for treatment, discharge or reuse, include: leachate, contaminated groundwater, storm water runoff, landfill gas condensate, truck/equipment washwater, drained free liquids, floor washings, and recovering pumping wells.

Leachate: Leachate is a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. Leachate is typically collected from a liner system above which waste is placed for disposal. Leachate may also be collected through the use of slurry walls, trenches or other containment systems.

Leachate Collection System: The purpose of a leachate collection system is to collect leachate for treatment or alternative disposal and to reduce the depths of leachate buildup or level of saturation over the low permeability liner.

Liner: The liner is a low permeability material or combination of materials placed at the base of a landfill to reduce the discharge to the underlying or surrounding hydrogeologic environment. The liner is designed as a barrier to intercept leachate and to direct it to a leachate collection .

Long-Term Average (LTA): For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in the proposed landfill regulation.

National Pollutant Discharge Elimination System (NPDES) Permit: A permit to discharge wastewater into waters of the United States issued under

the National Pollutant Discharge Elimination system, authorized by Section 402 of the CWA.

New Source: As defined in 40 CFR 122.2, 122.29, and 403.3 (k), a new source is any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced (1) for purposes of compliance with New Source Performance Standards (NSPS), after the promulgation of such standards being proposed today under CWA section 306; or (2) for the purposes of compliance with Pretreatment Standards for New Sources (PSNS), after the publication of proposed standards under CWA section 307(c), if such standards are thereafter promulgated in accordance with that section.

Non-Conventional Pollutants: Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR Part 401.

Non-Hazardous Subcategory: For the purposes of this report, Non-Hazardous Subcategory refers to all landfills regulated under Subtitle D of RCRA.

Non-Water Quality Environmental Impact: Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to air pollution, noise, radiation, sludge and solid waste generation, and energy usage.

NSPS: New Sources Performance Standards, applicable to new sources of direct dischargers whose construction is begun after the promulgation of effluent standards under CWA section 306.

OCPSF: Organic chemicals, plastics, and synthetic fibers manufacturing point source category. (40 CFR Part 414).

Off-Site: Outside the boundaries of a facility.

On-Site: The same or geographically contiguous property, which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same company or locality but connected by a right-of-way, which it controls, and to which the public does not have access, is also considered on-site property.

Pass Through: A pollutant is determined to ''pass through'' a POTW when the average percentage removed by an efficiently operated POTW is less than the percentage removed by the industry's direct dischargers that are using the BAT technology.

Point Source: Any discernable, confined, and discrete conveyance from which pollutants are or may be discharged.

Pollutants of Interest (POIs): Pollutants commonly found in landfill generated wastewaters. For the purposes of this report, a POI is a pollutant that is detected three or more times above a treatable level at a landfill, and must be present at more than one facility.

Priority Pollutant: One hundred twenty-six compounds that are a subset of the 65 toxic pollutants and classes of pollutants outlined in Section 307 of the CWA. The priority pollutants are specified in the NRDC settlement agreement (Natural Resources Defense Council et al v. Train, 8 E.R.C. 2120 [D.D.C. 1976], modified 12 E.R.C. 1833 [D.D.C. 1979]).

PSES: Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS: Pretreatment standards for new sources of indirect discharges, applicable to new sources whose construction has begun after the publication of proposed standards under CWA section 307(c), if such standards are thereafter promulgated in accordance with that section.

Publicly Owned Treatment Works (POTW): Any device or system, owned by a state or municipality, used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment (40 CFR 122.2).

RCRA: The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. Section 6901 *et seq.*), which regulates the generation, treatment, storage, disposal, or recycling of solid and hazardous wastes.

Subtitle C Landfill: A landfill permitted to accept hazardous wastes under Sections 3001 and 3019 of RCRA and the regulations promulgated pursuant to these sections, including 40 CFR Parts 260 through 272.

Subtitle D Landfill: A landfill permitted to accept only non-hazardous wastes under Sections 4001 through 4010 of RCRA and the regulations promulgated pursuant to these sections, including 40 CFR Parts 257 and 258.

Surface Impoundment: A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), used to temporarily or permanently treat, store, or dispose of waste, usually in the liquid form. Surface impoundments do not include areas constructed to hold containers of wastes. Other common names for surface impoundments include ponds, pits, lagoons, finishing ponds, settling ponds, surge ponds, seepage ponds, and clarification ponds.

Toxic Pollutants: Pollutants declared ''toxic'' under Section 307(a)(1) of the Clean Water Act.

Truck/Equipment Washwater: Wastewater generated during either truck or equipment washes at the landfill. During routine maintenance or repair operations, trucks and/or equipment used within the landfill (e.g., loaders, compactors, or dump trucks) are washed and the resultant washwaters are collected for treatment.

Variability Factor: The daily variability factor is the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, median or mean, of the distribution of the daily data. The monthly variability factor is the estimated 95th percentile of the distribution of the monthly averages of the data divided by the expected value of the monthly averages.

Zero Discharge: No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition are alternative discharge or disposal of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application

List of Subjects in 40 CFR Part 445

Environmental protection, Groundwater, Landfills, Leachate, Waste treatment and disposal, Water pollution control.

Dated: November 26, 1997.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR Part 445 is proposed to be added as follows:

PART 445—LANDFILLS POINT SOURCE CATEGORY

General Provisions

Sec.

Subpart A—RCRA Subtitle C Hazardous Waste Landfill Subcategory

Sec.

Subpart B—RCRA Subtitle D Non-Hazardous Waste Landfill Subcategory

Tables to Part 445

Authority: Sections 301, 304, 306, 307, and 501, Pub. L. 95–217, 91 Stat. 156, and Pub. L. 100–4 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

General Provisions

§ 445.1 Specialized definitions.

In addition to the definitions set forth in 40 CFR 122.2, 257.2, 258.2, 264.10, 401.11, and 403.3 the following definitions apply to this part:

(a) *Contaminated Groundwater* means water below the land surface in the zone of saturation which has been contaminated by activities associated with waste disposal.

(b) *Facility* is all contiguous property owned, operated, leased or under the control of the same person or entity.

(c) *Landfill unit* means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2, 258.2 and 264.10.

(d) *Landfill Process Wastewater* means all wastewaters associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, and contaminated groundwater. Landfill process wastewaters include, but are not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

(e) *Non-contaminated Storm water* means storm water which does not come into contact with the solid waste, and includes wastewater which flows off the cap or cover of the landfill.

(f) *Off-site* means outside the boundaries of a facility.

(g) *On-site* means within the boundaries of a facility.

§ 445.2 Applicability.

(a) Except as provided in paragraphs (b), (c), (d) and (e) of this section, the provisions of this part apply to wastewater discharges of landfill process wastewater from landfill units.

(b) The provisions of this part do not apply to wastewater discharges from land application or land treatment units, surface impoundments, underground injection wells, waste piles, salt dome formations, salt bed formations, underground mines or caves as these terms are defined in 40 CFR 257.2 and 260.10.

(c) The provisions of this part do not apply to wastewaters generated off-site of a landfill facility; including wastewaters generated off-site from washing vehicles or from waste transfer stations.

(d) The provisions of this part do not apply to discharges of contaminated groundwater.

(e) The provisions of this part do not apply to wastewater discharges of landfill process wastewater that is commingled for treatment with other non-landfill process wastewater under the following conditions: The landfill must be operated in conjunction with other, on-site industrial and commercial activities; and the landfill generating the process wastewater must only receive wastes generated on-site or wastes received from off-site facilities under the same corporate structure.

Subpart A—RCRA Subtitle C Hazardous Waste Landfill Subcategory

§ 445.10 Applicability; description of the Hazardous Landfills Subcategory.

The provisions of this subpart apply to discharges of landfill process wastewater from landfills subject to the provisions established in 40 CFR Part 264. *Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N–(Landfills),* and 40 CFR Part 265 *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N–(Landfills),* except as provided in § 445.2.

§ 445.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this part must achieve the effluent limitations listed in Table 1 of this part.

§ 445.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subcategory must achieve the effluent limitations for BOD_5, TSS, and pH listed in Table 1 of this part.

§ 445.13 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 1 of this part.

§ 445.14 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the effluent limitations listed in Table 1 of this part.

§ 445.15 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this part that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR Part 403 and achieve the pretreatment standards listed in Table 2 of this part.

§ 445.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart

that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards listed in Table 2 of this part.

Subpart B—Subtitle D Non-Hazardous Landfill Subcategory

§ 445.20 Applicability; description of the Non-Hazardous Landfill Subcategory.

The provisions of this part apply to discharges of landfill process wastewater from landfills subject to the provisions established in 40 CFR Part 258 (Criteria for Municipal Solid Waste Landfills) and 40 CFR Part 257 (Criteria for Classification of Solid Waste Disposal Facilities and Practices), except as provided in § 445.2.

§ 445.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 445.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, and pH listed in Table 3 of this part.

§ 445.23 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 445.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 445.25 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR Part 403. There are no additional pretreatment requirements established for non-hazardous landfills.

§ 445.26 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR Part 403. There are no additional pretreatment requirements established for wastewater discharges from non-hazardous landfills.

TABLE 1 TO PART 445.—HAZARDOUS LANDFILL CONCENTRATION LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for 1 day	Monthly average shall not exceed
BOD_5	160	40
TSS	89	27
Ammonia	5.9	2.5
Arsenic	1.0	0.52
Chromium (Total)	0.86	0.40
Zinc	0.37	0.21
Alpha Terpineol	0.042	0.019
Aniline	0.024	0.015
Benzene	0.14	0.036
Benzoic Acid	0.12	0.073
Naphthalene	0.059	0.022
P-Cresol	0.024	0.015
Phenol	0.048	0.029
Pyridine	0.072	0.025
Toluene	0.080	0.026
pH	Shall be in the range 6.0–9.0 pH units.	

TABLE 2 TO PART 445.—HAZARDOUS LANDFILL PRETREATMENT CONCENTRATION LIMITATIONS FOR DISCHARGES TO POTWS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for 1 day	Monthly average shall not exceed
Ammonia	5.9	2.5
Alpha Terpineol	0.042	0.019
Aniline	0.024	0.015
Benzoic Acid	0.23	0.13
P-Cresol	0.024	0.015
Toluene	0.080	0.026

TABLE 3 TO PART 445.—NON-HAZARDOUS LANDFILL CONCENTRATION LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for 1 day	Monthly average shall not exceed
BOD_5	160	40
TSS	89	27
Ammonia	5.9	2.5
Zinc	0.20	0.11
Alpha Terpineol	0.059	0.029
Benzoic Acid	0.23	0.13
P-Cresol	0.046	0.026
Phenol	0.045	0.026
Toluene	0.080	0.026
pH	Shall be in the range 6.0–9.0 pH units.	

[FR Doc. 98–3087 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday
February 6, 1998

Part VII

The President

Executive Order 13073—Year 2000 Conversion

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

Presidential Documents

Title 3—

The President

Executive Order 13073 of February 4, 1998

Year 2000 Conversion

The American people expect reliable service from their Government and deserve the confidence that critical government functions dependent on electronic systems will be performed accurately and in a timely manner. Because of a design feature in many electronic systems, a large number of activities in the public and private sectors could be at risk beginning in the year 2000. Some computer systems and other electronic devices will misinterpret the year ''00'' as 1900, rather than 2000. Unless appropriate action is taken, this flaw, known as the ''Y2K problem,'' can cause systems that support those functions to compute erroneously or simply not run. Minimizing the Y2K problem will require a major technological and managerial effort, and it is critical that the United States Government do its part in addressing this challenge.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* (a) It shall be the policy of the executive branch that agencies shall:

(1) assure that no critical Federal program experiences disruption because of the Y2K problem;

(2) assist and cooperate with State, local, and tribal governments to address the Y2K problem where those governments depend on Federal information or information technology or the Federal Government is dependent on those governments to perform critical missions;

(3) cooperate with the private sector operators of critical national and local systems, including the banking and financial system, the telecommunications system, the public health system, the transportation system, and the electric power generation system, in addressing the Y2K problem; and

(4) communicate with their foreign counterparts to raise awareness of and generate cooperative international arrangements to address the Y2K problem.

(b) As used in this order, ''agency'' and ''agencies'' refer to Federal agencies that are not in the judicial or legislative branches.

Sec. 2. *Year 2000 Conversion Council.* There is hereby established the President's Council on Year 2000 Conversion (the ''Council'').

(a) The Council shall be led by a Chair who shall be an Assistant to the President, and it shall be composed of one representative from each of the executive departments and from such other Federal agencies as may be determined by the Chair of the Council (the ''Chair'').

(b) The Chair shall appoint a Vice Chair and assign other responsibilities for operations of the council as he or she deems necessary.

(c) The Chair shall oversee the activities of agencies to assure that their systems operate smoothly through the year 2000, act as chief spokesperson on this issue for the executive branch in national and international fora, provide policy coordination of executive branch activities with State, local, and tribal governments on the Y2K problem, and promote appropriate Federal roles with respect to private sector activities in this area.

(d) The Chair and the Director of the Office of Management and Budget shall report jointly at least quarterly to me on the progress of agencies in addressing the Y2K problem.

(e) The Chair shall identify such resources from agencies as the Chair deems necessary for the implementation of the policies set out in this order, consistent with applicable law.

Sec. 3. *Responsibilities of Agency Heads.* (a) The head of each agency shall:

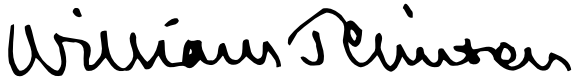
(1) assure that efforts to address the Y2K problem receive the highest priority attention in the agency and that the policies established in this order are carried out; and

(2) cooperate to the fullest extent with the Chair by making available such information, support, and assistance, including personnel, as the Chair may request to support the accomplishment of the tasks assigned herein, consistent with applicable law.

(b) The heads of executive departments and the agencies designated by the Chair under section 2(a) of this order shall identify a responsible official to represent the head of the executive department or agency on the Council with sufficient authority and experience to commit agency resources to address the Y2K problem.

Sec. 4. *Responsibilities of Interagency and Executive Office Councils.* Interagency councils and councils within the Executive Office of the President, including the President's Management Council, the Chief Information Officers Council, the Chief Financial Officers Council, the President's Council on Integrity and Efficiency, the Executive Council on Integrity and Efficiency, the National Science and Technology Council, the National Performance Review, the National Economic Council, the Domestic Policy Council, and the National Security Council shall provide assistance and support to the Chair upon the Chair's request.

Sec. 5. *Judicial Review.* This Executive order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 4, 1998.

[FR Doc. 98–3229
Filed 2–5–98; 8:45 am]
Billing code 3195–01–P

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Federal Register

Vol. 63, No. 25

Friday, February 6, 1998

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 6, 1998

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Intermediary relending program; published 2-6-98

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Intermediary relending program; published 2-6-98

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Intermediary relending program; published 2-6-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Intermediary relending program; published 2-6-98

DEFENSE DEPARTMENT

Acquisition regulations:

Weapon system acquisitions warranties; published 2-6-98

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Gamma aminobutyric acid; published 1-7-98

Glutamic acid; published 1-7-98

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Arkansas et al.; published 2-6-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Brother's Island Tuatara; published 1-7-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Tobacco; comments due by 2-13-98; published 2-2-98

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Pathogen reduction; hazard analysis and critical control point(HACCP) systems

Fresh pork sausage; salmonella performance standard; comments due by 2-11-98; published 1-12-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 2-12-98; published 12-29-97

International fisheries regulations:

Halibut catch sharing plan; regulatory areas 4A and 4B removed; comments due by 2-11-98; published 1-12-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Travel reimbursement; comments due by 2-9-98; published 12-9-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Pesticide active ingredient production; comments due by 2-9-98; published 12-17-97

Air pollution; standards of performance for new stationary sources:

Test methods and performance specifications; editorial changes and technical corrections; comments due by 2-13-98; published 1-14-98

Volitale organic compound (VOC) emissions—

Automobile refinish coatings; comments due by 2-13-98; published 12-30-97

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Utah; comments due by 2-13-98; published 1-14-98

Air quality implementation plans; approval and promulgation; various States:

Delaware; comments due by 2-11-98; published 1-12-98

Indiana; comments due by 2-13-98; published 1-14-98

Kentucky; comments due by 2-12-98; published 1-13-98

Ohio; comments due by 2-9-98; published 1-8-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Chlorothalonil; comments due by 2-10-98; published 12-12-97

Cyromazine; comments due by 2-9-98; published 12-10-97

Imidacloprid; comments due by 2-10-98; published 12-12-97

Myclobutanil; comments due by 2-10-98; published 12-12-97

Toxic substances:

Testing requirements—

Biphenyl, etc.; comments due by 2-9-98; published 12-24-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Communications Assistance for Law Enforcement Act; implementation; comments due by 2-11-98; published 1-13-98

Uniform system of accounts; interconnection; comments due by 2-9-98; published 12-10-97

Radio stations; table of assignments:

Oregon and Washington; comments due by 2-9-98; published 1-5-98

Texas; comments due by 2-9-98; published 1-5-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Travel reimbursement; comments due by 2-9-98; published 12-9-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

State product liability claims preemption by Federal law; comments due by 2-10-98; published 12-12-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—

Safe harbor provisions and special fraud alerts development; comments request; comments due by 2-9-98; published 12-10-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgagee's original approval agreement; termination; comments due by 2-9-98; published 12-10-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Topeka shiner; comments due by 2-9-98; published 12-24-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Arkansas; comments due by 2-9-98; published 1-9-98

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine and coal mine safety and health:

Underground mines—

Roof-bolting machines use; safety standards; comments due by 2-9-98; published 12-9-97

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards:

Tuberculosis, occupational exposure to

Extension of comment period; comments due by 2-13-98; published 12-12-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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